CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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Valuation: V98/10

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

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U.S. Customs Service

Treasury Decisions

(T.D. 98–48)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved January 9, 1998, to March 26, 1998, inclusive, pursuant to Subpart C, Part 191, Customs Regulations.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Port Director to whom the contract was forwarded or approved by, and the date on which it was approved.

Dated: May 15, 1998.

WILLIAM G. ROSOFF,
Acting Director,
Commercial Rulings Division.

(A) Company: American Cyanamid Co.
Articles: 5-methoxy methyl pyridine dicarboxylic acid (5-MMPDC)
Merchandise: 5-methylpyridine-2; 3-dicarboxylic acid dimethyl ester
Factories: Columbus & Dayton, OH; State College & Tyrone, PA; Rock Hill, SC
Proposal signed: December 16, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, February 25, 1998

(B) Company: Caribbean Refrescos, Inc.
Articles: Soft drink base concentrates
Merchandise: Anhydrous caffeine (1,3,7-trimethylxanthine)
Factory: Cidra, PR
Proposal signed: January 8, 1998
Basis of claim: Appearing in
Contract forwarded to PDs of Customs: San Francisco & Houston, February 23, 1998

(C) Company: Celanese, Ltd.
Articles: N-butyl alcohol (butanol)
Merchandise: Propylene
Factory: Bay City, TX
Proposal signed: February 13, 1998
Basis of claim: Used in
Contract issued by PD of Customs: Houston, March 3, 1998
Revokes: T.D. 97–53–G to cover company name change from Hoechst Celanese Chemical Group, Ltd.

(D) Company: Celanese, Ltd.
Articles: Crude acrylic acid
Merchandise: Propylene
Factory: Pasadena, TX
Proposal signed: February 13, 1998
Basis of claim: Used in
Contract issued by PD of Customs: Houston, March 3, 1998
Revokes: T.D. 97–54–N to cover company name change from Hoechst Celanese Chemical Group, Ltd.

(E) Company: Celanese, Ltd.
Articles: 2-ethyl hexanol acrylate (a/k/a 2-EH acrylate)
Merchandise: 2-ethyl hexanol (2-EH); unrefined grade acrylic acid
Factory: Pampa, TX
Proposal signed: February 13, 1998
Basis of claim: Used in
Contract issued by PD of Customs: Houston, March 3, 1998
Revokes: T.D. 98–9–O to cover company name change from Hoechst Celanese Chemical Group, Ltd.

(F) Company: Celanese, Ltd.
Articles: Inhibited ethyl acrylate
Merchandise: Ethylene; industrial and unrefined grade acrylic acid
Factories: Pasadena & Pampa, TX
Proposal signed: February 13, 1998
Basis of claim: Used in
Contract issued by PD of Customs: Houston, March 3, 1998
Revokes: T.D. 97–92–I to cover company name change from Hoechst Celanese Chemical Group, Ltd.

(G) Company: Celanese, Ltd.
Articles: Inhibited butyl acrylates
Merchandise: N-butyl alcohol; industrial and unrefined grade acrylic acid
Factories: Pasadena & Pampa, TX
Proposal signed: February 13, 1998
Basis of claim: Used in
Contract issued by PD of Customs: Houston, March 3, 1998
Revokes: T.D. 98–27–M to cover company name change from Hoechst Celanese Chemical Group, Ltd.

(H) Company: Celanese, Ltd.
Articles: Vinyl acetate monomer (VAM)
Merchandise: Methanol; ethylene; acetic acid
Factories: Houston & Pasadena, TX
Proposal signed: February 13, 1998
Basis of claim: Used in
Contract issued by PD of Customs: Houston, March 3, 1998
Revokes: T.D. 97–53–I to cover company name change from Hoechst Celanese Chemical Group, Ltd.

(I) Company: GIVIDI USA Inc.
Articles: Fiberglass fabrics
Merchandise: Fiberglass yarn
Factory: Ridgeway, SC
Proposal signed: November 20, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, March 17, 1998

(J) Company: Glaxo Wellcome Inc.
Articles: Imitrex® tablets (sumatriptan succinate tablets)
Merchandise: Sumatriptan succinate bulk drug
Factory: Zebulon, NC
Proposal signed: November 11, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: San Francisco, February 24, 1998

(K) Company: The Goodyear Tire & Rubber Co.
Articles: Tires; hose; V-belts; tank treads; air springs
Merchandise: N-(1,3 Dimethylbutyl)-N'-phenyl-p-phenylenediamine (a/k/a 6PPD; Zonflax®)
Factories: Gadsden, AL; Kingsman, AZ; Atlanta, GA; Mt. Pleasant, IA; Freeport, IL; Topeka, KS; Cumberland & Hannibal, MD; Lincoln & Norfolk, NE; Fayetteville, NC; Akron, Greensburg, Jackson & St. Marys, OH; Lawton, OK; Union City, TN; Tyler, TX; Danville, VA; Sun Prairie, WI
Proposal signed: August 19, 1996
Basis of claim: Used in
Contract issued by PD of Customs: New York, January 20, 1998
Revokes: T.D. 95–85–N to cover change in factory locations

(L) Company: Konica Manufacturing USA, Inc.
Articles: Photo sensitive paper (or color photographic paper)
Merchandise: Various chemicals and gelatins as set forth in Table I
Factory: Whitsett, NC
Proposal signed: November 13, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: San Francisco, February 2, 1998

(M) Company: LOMAC, Inc.
Articles: O-chloroaniline a/k/a OCA
Merchandise: Orthonitrochlorobenzene a/k/a ONCB
Factory: Muskegon, MI
Proposal signed: June 4, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Chicago, January 9, 1998

(N) Company: The Lubrizol Corp.
Articles: Lubricating oil additives
Merchandise: Polyisobutylene (lubricating oil additive intermediate)
Factories: Painesville, OH; Deerpark & Bayport, TX
Proposal signed: November 25, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: Chicago, March 24, 1998

(O) Company: Millenium Petrochemicals, Inc.
Articles: Linear low density polyethylene; low and high density polyethylene
Merchandise: Ethylene
Factories: Houston, Port Arthur & Alvin, TX; Morris & Tuscola, IL; Clinton, IA
Proposal signed: February 4, 1998
Basis of claim: Used in
Contract issued by PD of Customs: Houston, February 19, 1998
Revokes: T.D. 91–72–R to cover change in company name from Quantum Chemical Corp.

(P) Company: Minnesota Mining and Manufacturing Company (3M Co.)
Articles: Magnetic recording tape
Merchandise: Polyester film
Factory: Hutchinson, MN
Proposal signed: October 16, 1996
Basis of claim: Appearing in
Contract forwarded to PD of Customs: San Francisco, January 22, 1998

(Q) Company: Nipa Hardwicke Inc.
Articles: Meta-phenoxybenzaldehyde
Merchandise: Benzaldehyde
Factory: Elgin, SC
Proposal signed: October 1, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: Boston, January 30, 1998

(R) Company: Novartis Crop Protection, Inc.
Articles: Benoxacor®
Merchandise: Ortho-Nitrophenol; chloroacetone
Factories: St. Gabriel, LA; Webster City, IA
Proposal signed: May 16, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, February 11, 1998

(S) Company: Novartis Crop Protection, Inc. (successor to Ciba-Geigy Corp.'s T.D. 96–71–H under 19 USC 1313(s))
Articles: Supracide®
Merchandise: Methidathion technical
Factories: McIntosh, AL; Yuma, AZ
Proposal signed: May 16, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, March 26, 1998

(T) Company: Precision Fabrics Group, Inc.
Articles: Undyed and uninked impression ribbon
Merchandise: Piece goods
Factory: Greensboro, NC
Proposal signed: April 14, 1997
Basis of claim: Appearing in
Contract forwarded to PD of Customs: New York, January 9, 1998

(U) Company: RTP Co.
Articles: Thermoplastic compounds used in injection molding
Merchandise: Polyethersulfone Ultrason® E1010; Polyethersulfone Ultrason® E2010 Natural
Factories: Winona, MN; Dayton, NV; Fort Worth, TX
Proposal signed: November 25, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, March 17, 1998
Revokes: T.D. 93–5–U

(V) Company: Reynolds Metals Corp.
Articles: Calcined petroleum coke; green and baked carbon anodes
Merchandise: Green petroleum coke
Factories: Lake Charles & Baton Rouge, LA
Proposal signed: September 22, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: Chicago, January 9, 1998

(W) Company: Rhône-Poulenc, Inc.
Articles: Neodymium metal and neodymium metal alloys
Merchandise: Neodymium fluoride
Factory: Phoenix, AZ
Proposal signed: July 2, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, February 3, 1998

(X) Company: Shell Oil Co.
Articles: Polyethylene terephthalate (PET) resins
Merchandise: Isophthalic acid
Factory: Apple Grove, WV
Proposal signed: January 7, 1998
Basis of claim: Appearing in
Contract forwarded to PD of Customs: Houston, January 23, 1998

(Y) Company: Solutia, Inc.
Articles: Carpet staple; tire yarn; no-shock fiber (conductive textile fiber); nylon 6,6 flake (polymer); dry adipic acid; dimethyladipate (DMA); dimethylglutarate (DMG); dimethylsuccinate (DMS); mixed dimethyl esters (mixtures of DMA, DMG and DMS)
Merchandise: Cyclohexane; cyclohexanone (K); cyclohexanol (A); cyclohexanol/ cyclohexanone (KA)
Factories: Gonzales, FL; Greenwood, SC
Proposal signed: November 6, 1997
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Contract forwarded to PD of Customs: Chicago, March 25, 1998

(Z) Company: TEVA Pharmaceuticals USA (successor to Biocraft Laboratories, Inc.'s T.D. 96–26–B under 19 USC 1313(s))
Articles: Penicillin G sulfoxide; cephalosporin G; 7-aminodesacetoxy-cephalosporanic acid (7-ADCA); cephalexin monohydrate; 6-aminopenicillin acid (6-APA); oxacillin sodium monohydrate; cloxacillin sodium monohydrate; amoxicillin trihydrate; dicloxi-cillin sodium monohydrate; ampicillin trihydrate
Merchandise: Penicillin G potassium (PEN GK); 7-phenylacetamido-deacetoxy cephalosporanic acid (cephalosporin G) (Ceph G); 7-aminodesacetoxylcephalosporic acid (7-ADCA); pivaloyl chloride (neopentanoyl chloride, trimethylacetyl chloride); bis-(trimethylsilyl)-urea; D-(alpha)-phenylglycine (benezene-acetic acid); D-(-)-parahydroxyphenylglycine; D-(alpha)-Dane salt; D-(-)-parahydroxy Dane salt
Factories: Fair Lawn & Waldwick, NJ; Mexico, MO
Proposal signed: September 2, 1997
Basis of claim: Used in
Contract forwarded to PD of Customs: New York, January 22, 1998

19 CFR Parts 162 and 178

(T.D. 98–49)

RIN 1515–AB98

PRIOR DISCLOSURE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations governing "prior disclosure", including implementation of the Customs modernization provisions of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the filing or attempted filing of a drawback claim, or an entry or introduction, or attempted entry or introduction of merchandise into the United States by fraud, gross negligence, or negligence. Pursuant to the "prior disclosure" provision of 19 U.S.C. 1592(c)(4) as amended by the Mod Act, and 19 U.S.C. 1593a(c)(3), if a person commits a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a and discloses the circumstances of the violation before, or without knowledge of, the commencement of a formal investigation of such violation, merchandise shall not be seized and any monetary penalty to be assessed shall be limited. "Commencement of a formal investigation" for purposes of 19 U.S.C. 1592 and 1593a is defined in these regulations. The document also amends the regulations to give Fines, Penalties and Forfeitures Officers discretion to defer Customs disclosure verification proceedings until the disclosing party has an opportunity to explain all the circumstances underlying the disclosed violation.

EFFECTIVE DATE: June 29, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch (202) 927–2344.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103–182). The Customs modernization portion of this Act (Title VI), popularly known as the Customs Modernization Act, or "the Mod Act" became effective when it was signed. Section 621 of Title VI amended section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) (hereinafter referred to as section 592), and section 622 of Title VI added new section 593a. On September 26, 1996, Customs published in the Federal Register (61 FR 50459) a notice of proposed rulemaking to amend the Customs Regulations governing

prior disclosure as it relates to sections 592 and 593a. Pursuant to the "prior disclosure" provision of 19 U.S.C. 1592(c)(4) as amended by the Mod Act, and 19 U.S.C. 1593a(c)(3), if a person commits a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a and discloses the circumstances of the violation before, or without knowledge of, the commencement of a formal investigation of such violation, merchandise shall not be seized and any monetary penalty to be assessed shall be limited.

It is noted that it is the policy of the Customs Service to encourage the submission of prior disclosures.

The notice of proposed rulemaking invited public comments on the proposals, which would be considered before adoption of a final rule. The public comment period closed on November 25, 1996.

ANALYSIS OF COMMENTS:

A total of thirty-seven commenters responded to the solicitation of comments during the public comment period. Many commenters applauded Customs efforts to re-organize and simplify the regulations involving prior disclosure. Ten of the commenters set forth specific recommendations to change the proposed amendments on a "section by section" basis. Five of these ten commenters made general comments which were not directly related to a specific section of the proposal. The remaining twenty-seven commenters set forth the single recommendation to amend the proposal to include a regulatory prohibition that would specify that a valid prior disclosure precludes the assessment of a liquidated damage claim for the disclosed violation.

The specific "section by section" recommendations and/or suggestions, general recommendations and/or suggestions, and the Customs responses thereto, are set forth below.

PROPOSED § 162.74(a)

Comment:

One commenter suggests that § 162.74(a)(2) be amended to preclude "oral" prior disclosures. If adopted, the commenter recommends deleting all other references to oral prior disclosures in the proposal. No reason is articulated for suggesting this change.

Customs Response:

We can find no valid reason for precluding a party from making an oral prior disclosure. Of course, as with a party making a written prior disclosure, a party who elects to make an oral disclosure must meet the regulatory criteria governing "disclosure of the circumstances of the violation" before, or without knowledge of the commencement of a formal investigation of such violation, in order to obtain prior disclosure benefits.

Comment:

One commenter suggests that Customs change proposed § 162.74(a)(2) to reflect that the "appropriate Customs officer," rather than the Fines, Penalties and Forfeitures Officer, be the deciding official

regarding whether the party had included substantially the information set forth in paragraph (b) of proposed § 162.74. The commenter is of the opinion that the decision-making authority should be vested in a Customs officer not connected to a potential penalty action. For similar reasons, another commenter suggests that the port director should be the deciding official instead of the Fines, Penalties and Forfeitures Officer.

Customs Response:

We disagree. Inasmuch as the evaluation of information regarding the potential assessment of penalties under 19 U.S.C. 1592 or 19 U.S.C. 1593a is within the province of the Fines, Penalties and Forfeitures Officer, we are of the opinion that the Fines, Penalties and Forfeitures Officer is the appropriate Customs official to determine whether the criteria set forth in proposed § 162.74(b) is met.

Comment:

One commenter suggests that proposed § 162.74(a)(2) be amended to include language that indicates that a disclosing party is presumed to have no knowledge of the commencement of a formal investigation of the disclosed violation, unless Customs can rebut such presumption by virtue of one or more of the events set forth in proposed § 162.74(i).

Customs Response:

Proposed § 162.74(i) sets forth events which give rise to presumptions of knowledge of the commencement of a formal investigation of the disclosed violation(s). Inasmuch as circumstances may exist that demonstrate "knowledge," but that are not included in the list of events set forth in proposed § 162.74(i), we do not believe that adoption of this suggestion is warranted. Moreover, we believe creating such a presumption would conflict with 19 U.S.C. 1592 and 1593a, which places the burden to demonstrate lack of knowledge on the disclosing party.

Comment:

One commenter recommends that the Fines, Penalties and Forfeitures Officer should not be listed in proposed § 162.74(a)(2) as the sole officer to decide whether the disclosing party made a "disclosure of the circumstances of a violation" *(i.e.,* the criteria set forth in proposed § 162.74(b)), and that any such decisions should be subject to review or appeal. Further, for the sake of grammatical continuity, the commenter recommends deletion of the word "that" after the word "satisfied" in proposed § 162.74(a)(2).

Customs Response:

For reasons discussed above, we are of the opinion that the Fines, Penalties and Forfeitures Officer is the appropriate Customs official to determine whether or not the party has met the criteria set forth in proposed § 162.74(b). With respect to a right of review or appeal of such determinations, Customs notes that such rights already are ensured by virtue of the disclosing party's right to petition if Customs issues a pre-

penalty or penalty notice initiating or assessing regular penalties. Lastly, we note that we have adopted the commenter's grammatical recommendation.

PROPOSED § 162.74(b)

Comment:

One commenter recommends that the word "violator" in proposed § 162.74(b)(4) be changed to "disclosing party."

Customs Response:

The recommendation is adopted.

Comment:

One commenter suggests that proposed § 162.74(b)(4) should be clarified to indicate that requests for extensions apply to all information specified in proposed § 162.74(b).

Customs Response:

We disagree. The adoption of the suggestion is contrary to the principle of "shared responsibility" and would eliminate the obligation to initially provide **any** information regarding a claimed prior disclosure.

Comment:

One commenter suggests that Customs change proposed § 162.74(b)(4) to reflect that extension requests should normally be granted by Customs except in certain specified circumstances.

Customs Response:

Customs believes that this change is not necessary. We note that the commenter did not specify circumstances that would warrant a denial of a request for an extension, and we believe that the creation of such circumstances would not be in the interests of either the disclosing party or the Customs Service.

Comment:

One commenter recommends that proposed § 162.74(b)(4) be changed to specify that information provided to Customs pursuant to this provision may not be used to initiate or develop a criminal investigation or proceeding. The commenter suggests that use of such information to develop criminal cases impinges on the disclosing party's Constitutional 5th Amendment rights.

Customs Response:

Customs disagrees. In addition to the fact that a party *elects* to make a claimed prior disclosure, it should be noted that current law requires referral of suspected criminal violations to the concerned U.S. Attorney's office. Consequently, the decision to prosecute a suspected violation of criminal statutes rests with the concerned U.S. Attorney's office rather than the Customs Service.

PROPOSED § 162.74(c)

Comment:

One commenter suggests a change in the language in this section to make it clearer that the disclosing party may decide to wait to tender the actual loss of duties until Customs advises the party of its calculation of the actual loss of duties. The commenter is of the opinion that the current language is ambiguous, and that some ports have insisted that lost duties be tendered at the time of disclosure. Further, the commenter recommends that the period for tendering an actual loss of duties after having been notified by Customs of such loss be extended from 30 days to 60 days, and that the party may request an extension of time to tender.

Customs Response:

We agree that the language suggested by the commenter regarding the timing of a tender is less ambiguous than the proposed language and have revised this section in accordance with the commenter's recommendation. On the other hand, we see no reason to change the 30 day period to tender an actual loss calculated by Customs to 60 days. We note that the proposed regulations do provide the Fines, Penalties and Forfeitures Officer with the authority to extend the 30 day period if it is determined that there is good cause to do so.

Comment:

One commenter recommends adding a subsection to proposed § 162.74(c) to provide for refund in the event that Customs determines that the amount tendered is not, in fact, an actual loss of duties. Three other commenters recommend that proposed § 162.74(c) be revised to provide the disclosing party with a mechanism to challenge or protest Customs calculation of the actual loss of duties. Two of these three commenters suggest that the inability to challenge Customs actual loss calculation discourages prior disclosures.

Customs Response:

We agree that where legitimate disputes exist between a Customs field office and a disclosing party regarding the amount of the actual loss of duties due the government, there should be some mechanism for review at Customs Headquarters—provided that the Customs claimed loss of duty is substantial *(i.e.*, exceeds $100,000); the disclosing party deposits the Customs claimed actual duty loss amount; greater than one year remains under the statute of limitations; and that the Headquarters review is limited solely to the basis for Customs determination of the actual duty loss. In addition, we note that granting such review is within the discretion of Customs Headquarters, and that such review is conditioned upon the disclosing party's compliance with all other provisions of the prior disclosure regulations. We also note that where Headquarters review is afforded, such review is not limited to the revenue loss claims raised by the Customs field office or disclosing party, but could involve an independent Headquarters determination. Lastly, al-

though the Headquarters decision on such review may result in a partial or total refund of the deposited duty loss amount, the regulations indicate that, in any case where such review is afforded, the Headquarters decision is final and not subject to administrative or judicial appeal. In effect, the disclosing party who elects to request such Headquarters review should be aware that, if granted, the party is waiving any right to contest Headquarters actual loss of duties determination—either administratively or judicially.

PROPOSED § 162.74(d)

Comment:

One commenter recommends that proposed § 162.74(d)(2) be revised to require that Customs furnish a receipt that indicates the time and date of Customs receipt of claimed prior disclosure documents delivered in person. The commenter suggests that it is somewhat anomalous to require a person delivering documents to Customs to request a receipt, and that as part of "shared responsibility" it seems more appropriate to provide that the person delivering the documents would be furnished a receipt.

Customs Response:

Customs agrees that the proposed regulation should be amended to reflect that a receipt will be furnished to the person delivering documents, but in keeping with the spirit of "shared responsibility," we remain of the opinion that the receipt will be furnished upon request.

Comment:

One commenter claims that proposed § 162.74(d)(3) is silent as to the specific time and date when a claimed oral prior disclosure becomes effective. The commenter provides revised language which indicates that orally provided information is "deemed to have occurred at the time the oral communication is made."

Customs Response:

We disagree with the premise of this recommendation. The proposed regulation does, in fact, provide that claimed oral prior disclosures are "deemed to have occurred at the time Customs was provided with the information which substantially complies with the requirements set forth in paragraph (b) of this section."

PROPOSED § 162.74(e)

Comment:

Two commenters point out an apparent inconsistency between proposed § 162.74(e)(2) and proposed § 162.74(a)(1), in that the latter proposed section provides for making a claimed prior disclosure to a "Customs officer," whereas the former proposed section provides for making a "multi-port" claimed prior disclosure to "all concerned Fines, Penalties and Forfeitures Officers." One of the commenters suggests that Port Director be substituted for Fines, Penalties and Forfeitures Officer.

Customs Response:

We agree that there is an apparent inconsistency between the two proposed sections. Customs is revising proposed § 162.74(e)(2) to reflect that although a "multi-port" claimed prior disclosure may be made to a Customs officer, unless the claimed prior disclosure is made directly to the concerned Fines, Penalties and Forfeitures Officer, it is incumbent upon the Customs officer to refer the claimed prior disclosure to the concerned Fines, Penalties and Forfeitures Officer so that consolidation of the matter can be arranged in accordance with internal procedures. We believe that a disclosing party should not be limited to providing the claimed prior disclosure to the concerned port director.

PROPOSED § 162.74(f)

Comment:

One commenter recommends that the word "violator" in proposed § 162.74(f) be changed to "disclosing party."

Customs Response:

The recommendation is adopted.

Comment:

One commenter recommends that the Fines, Penalties and Forfeitures Officer be eliminated in proposed § 162.74(f) as the Customs official responsible for requests for the withholding of initiation of disclosure verification proceedings. No specific reason is suggested for this change.

Customs Response:

Inasmuch as the concerned Fines, Penalties and Forfeitures Officer is the Customs officer who is responsible for ascertaining the validity of the claimed prior disclosure, we see no reason to adopt the recommended change.

Comment:

One commenter suggests that proposed § 162.74(f) be revised to include language indicating that requests to withhold initiation of disclosure verification proceedings of the claimed prior disclosure should be granted "except for good cause."

Customs Response:

The suggestion is not adopted. In the event that Customs learns of a serious abuse of discretion regarding such requests, Customs can take measures to eliminate the problem through either internal guidelines, regulatory revisions or whatever other action is deemed appropriate.

Comment:

One commenter suggests that proposed § 162.74(f) be revised to provide the Fines, Penalties and Forfeitures Officer with the discretion to defer notification to the Office of Investigations of a claimed prior disclosure. The commenter is of the opinion that the deferral of notifica-

tion should be predicated on a number of factors, such as the gravity of the disclosed violation, any pattern of non-compliance, etc.

Customs Response:

The notification to the Office of Investigations of the claimed disclosure serves to prevent delay in the administrative disposition of the disclosure, in that the Office of Investigations can take immediate action to initiate or coordinate disclosure verification proceedings as well as ascertain whether or not Customs already had commenced a formal investigation of the claimed prior disclosure. Consequently, Customs is of the opinion that the proposed regulation remain unchanged.

Comment:

One commenter recommends that proposed § 162.74(f) be changed to reflect that a disclosing party may also request that Customs audits be included in a request to withhold initiation of disclosure verification proceedings.

Customs Response:

Inasmuch as audits initiated solely to verify disclosures would often be considered part of the disclosure verification proceedings, Customs is of the opinion that the suggested change is unnecessary.

Comment:

One commenter suggests that Customs add to the end of the first sentence in proposed § 162.74(f) "and the Office of Investigations is requested to determine whether or not investigation is pending or contemplated." The commenter does not provide a reason for the suggested change.

Customs Response:

In view of the fact that internal procedures already exist regarding the handling of claimed prior disclosures by the Office of Investigations, Customs is of the opinion that the suggested change is unnecessary.

PROPOSED § 162.74(g)

Comment:

Two commenters indicate that, based upon Congressional discussions involving the Customs Modernization Act, proposed § 162.74(g) should include language to require that records of a "commencement of a formal investigation" be maintained in the Office of Investigations, Customs Headquarters or some other central unit. One of these two commenters also suggests that the regulation specify the official who is charged with recording the "commencement" information. Also, this commenter suggests that the words "with regard to the disclosing party" be added after the word "commenced" in the first sentence of the proposed section. A third commenter recommends that this section be revised to indicate that only Customs agents from the Office of Investigations can commence formal investigations for prior disclosure purposes. Three other commenters recommend that the proposed section

be revised to require that a formal investigations control number be assigned to the written commencement document or otherwise require the Office of Investigations to open an investigation. Lastly, one other commenter suggests revisions to the proposed section which specify the form and nature of the "commencement" document.

Customs Response:

Customs is of the opinion that proposed § 162.74(g) fully comports with the Customs Modernization Act's statutory language and intent regarding the definition of the term "commencement of a formal investigation." The proposed language requires that the Customs Service evidence the commencement by a writing, as well as specifies that the disclosing party will receive written evidence of such a "commencement" in any required notice issued to the party pursuant to 19 U.S.C. 1592 or 1593a, in the event the claimed prior disclosure is denied. We do not agree that the law mandates that agents of the Office of Investigations are the only Customs officials capable of commencing a formal investigation for the purposes of prior disclosure. Further, in Customs view, additional requirements involving custody of such records, or record forms/formats, record maintenance or case control numbers are not properly the province of regulation, but rather, concern internal procedures developed by the agency. We do agree with the suggestion to include the phrase "with regard to the disclosing party" after the word "commenced" in the first sentence, and have revised the proposed section to reflect adoption of this recommendation.

Comment:

One commenter states that proposed § 162.74(g) should indicate that a Customs Form 28 (Request for Information) and Customs Form 29 (Notice of Action) cannot be considered written evidence of a "commencement of a formal investigation." The commenter is of the opinion that these documents will have a "chilling" effect on the prior disclosure provisions if they are permitted to be construed as "formal commencement" documents, in that they, for the most part, merely request information or propose rate or value advances.

Customs Response:

As indicated above, Customs is of the opinion that dictating the form of the "commencement" writing is not properly the province of regulation. We do agree that Customs Forms 28 and 29 which merely request information or propose rate or value advances could not be considered "commencement" documents for prior disclosure purposes unless they articulate that a possibility of a violation existed.

Comment:

One commenter recommends deleting the phrase "denied prior disclosure treatment on the basis of the commencement of a formal investigation of the disclosed violation" in the second sentence of proposed § 162.74(g). The commenter points out that "commencement of a for-

mal investigation is merely one fact bearing on the ultimate resolution of the matter."

Customs Response:

Customs agrees with the commenter that "commencement of a formal investigation of the disclosed violation" is one of several issues concerning the disposition of the claimed prior disclosure *(e.g.,* a disclosing party may be unable to obtain prior disclosure benefits if the party fails to "disclose the circumstances of the violation" in accordance with § 162.74(b)—and this may occur in cases where Customs had not commenced a formal investigation). Nevertheless, this provision of proposed § 162.74(g) addresses those instances where the denial of the prior disclosure *is* predicated on the commencement of the formal investigation of the disclosed violation. In such cases, the regulation requires a copy of a writing evidencing the commencement of a formal investigation of the disclosed violation. Accordingly, the recommendation is not adopted.

Comment:

One commenter recommends that proposed § 162.74(g) be revised to indicate that any required notice issued pursuant to 19 U.S.C. 1592 or 1593a should specify the event listed in proposed § 162.74(i) that provided the disclosing party with knowledge of the commencement of a formal investigation of the disclosed violation. The commenter believes that inclusion of such a provision would eliminate disputes regarding the issue of knowledge of the commencement.

Customs Response:

We disagree. Customs notes that the purpose underlying proposed § 162.74(g) is to provide a definition of the "commencement of a formal investigation" for prior disclosure purposes. We note that notices issued to the disclosing party pursuant to 19 U.S.C. 1592 or 1593a may commence a formal investigation of the disclosed violation and may be issued prior to the claimed disclosure. It should also be noted that the law establishes the burden to demonstrate lack of knowledge of the commencement of the formal investigation upon the disclosing party.

Comment:

One commenter suggests that proposed § 162.74(g) be revised to require that the disclosing party be notified of the acceptance or denial of the claimed prior disclosure as soon as Customs makes that decision, and that documentary evidence of the "commencement of a formal investigation" should be furnished to the disclosing party well in advance of the initiation of penalty proceedings.

Customs Response:

Customs believes that the statutory and regulatory procedures in place are sufficient to advise parties of the validity of a claimed prior disclosure. Also, it is well established that an invalid prior disclosure may subject the disclosing party to penalties.

PROPOSED § 162.74(h)

Comment:

One commenter recommends that proposed § 162.74(h) be revised to clarify that once an investigation begins with respect to a disclosed violation, the disclosing party still may obtain prior disclosure treatment for other violations not covered by the commenced formal investigation.

Customs Response:

Customs does not believe that clarification is necessary. The proposed section makes clear that additional disclosed violations not covered in the disclosing party's original prior disclosure may receive prior disclosure benefits, provided that such additional disclosures were made before "the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of such additional violations existed."

PROPOSED § 162.74(i)

Comment:

Five commenters recommend that proposed § 162.74(i) be revised to require that for the "presumption of knowledge" to be effective any Customs notification of the disclosed violation to the disclosing party that precedes the claimed prior disclosure must be evidenced by a "writing." Four of the five commenters maintain that such a requirement will avoid unnecessary conflict or misunderstandings concerning the content or circumstances of an oral notification by Customs. Two of the five commenters are of the opinion that a written notification requirement also should require a return receipt. In addition, two of the five commenters recommend that proposed § 162.74(i) be revised to ensure that "general inquiries" *(e.g.*, Customs Forms 28 and 29) are not used as evidence of prior knowledge of the commencement of a formal investigation of the disclosed violation. One of these two commenters suggests inclusion of the phrase "so informed the person of that reasonable belief," immediately following the statutory citations in proposed § 162.74(i)(1)(i) in order to clarify that "general inquiries" would not constitute a presumption of knowledge.

Customs Response:

Customs notes that although the Customs Modernization Act prior disclosure changes added the requirement that a "commencement of a formal investigation" must be evidenced by a writing, the Modernization Act changes did not impose such a writing requirement regarding "knowledge of the commencement of a formal investigation" involving Customs notification to the disclosing party. Customs believes that the language of the proposed regulatory section makes clear that "general inquiries" or mere "contact" with a Customs officer prior to the submission of the claimed prior disclosure is insufficient to create a "presump-

tion of knowledge" of the commencement of a formal investigation of the disclosed violation. In those instances where oral notification pursuant to proposed § 162.74(i) renders the presumption operative, the concerned Customs Official must meet other criteria—such as informing the person of the type of or circumstances of the disclosed violation.

Customs is of the opinion that its position regarding "presumption of knowledge" is consistent with the underlying Modernization Act theme of "shared responsibility"—if a party receives oral notification from a Customs officer of the type of or circumstances of the violation(s) at issue *before* making the claimed prior disclosure, Customs believes that prior disclosure benefits should not accrue—unless, of course, the party is able to rebut the presumption of knowledge as provided for under the proposed regulatory provision. Also, it should be noted that even if one or more of the events have taken place as set forth in the proposed § 162.74(i), a party still may wish to submit a claimed disclosure—either because the party believes it can rebut the presumption of knowledge, or because the party seeks to obtain substantial mitigation in an ensuing penalty proceeding (despite the fact that the information provided to Customs does not qualify for disclosure benefits).

Comment:

One commenter suggests changing proposed § 162.74(i) so that it cannot be read to permit denial of prior disclosure benefits in those instances where one of the events or notifications under the proposed regulatory section takes place, but no formal investigation has been commenced. Another commenter recommends that Customs should eliminate the language in the proposed section which places the burden of proving "lack of knowledge" on the disclosing party.

Customs Response:

Customs believes the proposed section is clear. The second sentence of proposed § 162.74(i) sets forth the requirement that the commencement of a formal investigation must occur before there can be a presumption of knowledge. Consequently, Customs sees no need to adopt the first commenter's suggestion. With respect to the burden of proving lack of knowledge, we reject the commenter's suggestion to eliminate this burden inasmuch as both concerned statutory provisions *(i.e.*, 19 U.S.C. 1592(c)(4) and 19 U.S.C. 1593a(c)(3)(c)) establish the burden of proving lack of knowledge.

GENERAL COMMENTS

Comment:

One commenter recommends that prior disclosure benefits should extend to violations of the customs laws other than violations of 19 U.S.C. 1592 or 1593a.

Customs Response:

Customs notes that the proposed regulations are being promulgated based upon the statutory authority establishing "prior disclosure" for

violations of 19 U.S.C. 1592 and 1593a. Currently, such statutory authority for permitting "prior disclosure" of other violations of the customs laws does not exist. Nevertheless, it should be noted that in some instances, a party who discloses a violation of the customs laws (other than 19 U.S.C. 1592 or 1593a) may be entitled to substantial mitigation in the administrative disposition of the offense under existing Customs guidelines for such violations.

Comment:

Twenty-six commenters recommend that the proposed amendments be revised to prohibit an assessment of liquidated damages for a violation revealed in a 19 U.S.C. 1592 or 1593a prior disclosure. The vast majority of these commenters are of the opinion that it is unfair for the Customs Service to assess liquidated damages against a Foreign-Trade Zone (FTZ) operator for breach of the FTZ operator's bond based on information obtained from a prior disclosure submitted by an operator. These commenters believe that inasmuch as most valid prior disclosures by FTZ operators involve a tender of all lost revenue, Customs is made whole and that the subsequent assessment of liquidated damages should not be allowed. The FTZ commenters are of the opinion that the proposed regulations unfairly discriminate against FTZ operators, and serve to deter such parties from submitting prior disclosures.

Customs Response:

Customs notes that unlike the assessment of civil penalties, the assessment of liquidated damages for a breach of bond terms is based upon the contractual agreement with the bondholder. Accordingly, although Customs may, under existing guidelines, reduce liquidated damage amounts in administrative proceedings—particularly in those cases where a valid prior disclosure is submitted, the agency does not believe the suggestion should be adopted.

Comment:

One commenter suggests that the proposed regulations include a statement that indicates that the submission of valid prior disclosures is encouraged.

Customs Response:

Customs notes that the commenter's suggested statement is not provided for by statute, but rather is a recommended statement of agency policy. Inasmuch as it is the policy of the Customs Service to encourage the submission of prior disclosures in accordance with the proposed regulatory requirements, we have added such a sentence to the preamble of this document.

Comment:

One commenter is of the opinion that the annual reporting burden set forth in the section under Paperwork Reduction Act heading is understated. The commenter believes that it also would be helpful for the

estimated number of respondents shown to be based on the actual number of prior disclosures filed annually in the last several years.

Customs Response:

Customs notes that the figures set forth in the notice of proposed rulemaking are Customs best estimates of both the annual reporting burden, estimated annual number of respondents and estimated average annual burden per respondent. Inasmuch as a prior disclosure may involve one Customs entry with one line item, or several thousand Customs entries involving hundreds of line items, it is virtually impossible to predict either the frequency at which disclosures will be made, or the amount of time necessary to complete a disclosure. It should also be noted that the simplicity or complexity of the "disclosed violation," as well as the number of line items at issue may involve a completion time that is either substantially more or less than the "one hour for each Customs entry" set forth in the notice of proposed rulemaking. In view of these considerations and the voluntary nature of the prior disclosure provisions, Customs is of the opinion that its estimates comport with the regulatory requirements of the Paperwork Reduction Act.

Comment:

One commenter believes that it would be helpful to acknowledge in this document that there may be instances where the disclosing party requires several months—or even longer—to submit all of the required information to complete its disclosure of the circumstances of the violation.

Customs Response:

Customs acknowledges that in certain cases a claimed prior disclosure may involve numerous transactions, multiple ports, and/or complex issues and information—all of which require adequate research and compilation time. The agency is of the opinion that the proposed regulations accommodate such prior disclosures by virtue of the ability of the party to request extensions of time to research and compile such information.

Comment:

One commenter recommends that the proposed regulations include a provision that either establishes a procedure for appealing a denial of a claimed prior disclosure, or references such a procedure found elsewhere in the Customs Regulations. The commenter is of the opinion that such a provision or statement would serve to avoid unnecessary litigation.

Customs Response:

Customs notes that, ordinarily, the denial of a prior disclosure is manifested by Customs initiation of administrative penalty proceedings at ordinary penalty amounts under either 19 U.S.C. 1592 or 1593a. Inasmuch as the disclosing party may avail itself of administrative petitioning rights in such cases (including the right to petition Customs denial

of prior disclosure treatment), Customs believes it is unnecessary to enact a separate or additional appeal procedure.

Comment:

Four commenters are of the opinion that Customs should reinstate the "minor violations" section of the regulations governing prior disclosure (former § 162.74(j)). The commenters believe that the proposed regulations should state that minor, non-fraudulent violations should not be subject to penalty, and one commenter believes that such infractions should not be referred to the Office of Investigations. Another commenter believes that the deletion of former § 162.74(j) will discourage prior disclosure of minor violations.

Customs Response:

Customs notes that despite the deletion of former § 162.74(j), the agency does not anticipate any change of practice with respect to minor violations. It should be noted that inasmuch as "minor violations" already are addressed in Customs revised penalty guidelines (19 CFR Part 171, Appendix B), former § 162.74(j) is unnecessary.

CONCLUSION

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR § 178.2).

REGULATORY FLEXIBILITY ACT

Insofar as this amendment closely follows legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12866

This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this final regulation was submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and approved under OMB control number 1515–0212. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is in § 162.74. This information is required in connection with prior disclosure by a person of a violation of law committed by that person involving the filing or attempted filing of a drawback claim, or an entry or introduction, or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence. This information will be used by Customs to determine if the party discloses the circumstances of a violation before, or without knowledge of, the commencement of a formal investigation of such violation, so that merchandise would not be seized and any monetary penalty to be assessed would be limited. The collection of information is required to obtain a benefit. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average burden associated with the collection of information in this final rule is 1 hour per respondent or recordkeeper for each Customs entry involved in prior disclosure. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, and to the OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Keith B. Rudich, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 162

Customs duties and inspection, Law enforcement, Seizures and forfeitures.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

In accordance with the preamble, Parts 162 and 178 of the Customs Regulations (19 CFR Parts 162 and 178) are amended as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation for Part 162 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * * * *

2. Section 162.71 is amended by removing paragraph (e).

3. Section 162.74 is revised to read as follows:

§ 162.74 Prior Disclosure.

(a) *In general.*—(1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in paragraph (b) of this section) of 19 U.S.C. 1592 or 19 U.S.C. 1593a, either orally or in writing to a Customs officer before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (c) of this section. A Customs officer who receives such a tender in connection with a prior disclosure shall ensure that the tender is deposited with the concerned local Customs entry officer.

(2) A person shall be accorded the full benefits of prior disclosure treatment if that person provides information orally or in writing to Customs with respect to a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a if the concerned Fines, Penalties and Forfeitures Officer is satisfied the information was provided before, or without knowledge of, the commencement of a formal investigation, and the information provided includes substantially the information specified in paragraph (b) of this section. In the case of an oral disclosure, the disclosing party shall confirm the oral disclosure by providing a written record of the information conveyed to Customs in the oral disclosure to the concerned Fines, Penalties and Forfeitures Officer within 10 days of the date of the oral disclosure. The concerned Fines, Penalties and Forfeiture Officer may, upon request of the disclosing party which establishes a showing of good cause, waive the oral disclosure written confirmation requirement. Failure to provide the written confirmation of the oral disclosure or obtain a waiver of the requirement may result in denial of the oral prior disclosure.

(b) *Disclosure of the circumstances of a violation.* The term "discloses the circumstances of a violation" means the act of providing to Customs a statement orally or in writing that:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation or drawback claim included in the disclosure by entry number, drawback claim number, or by indicating each concerned Customs port of entry and the approximate dates of entry or dates of drawback claims;

(3) Specifies the material false statements, omissions or acts including an explanation as to how and when the occurred; and

(4) Sets forth, to the best of the disclosing party's knowledge, the true and accurate information or data that should have been provided in the entry or drawback claim documents, and states that the disclosing party will provide any information or data unknown at the time of disclosure within 30 days of the initial disclosure date. Extensions of the 30-day period may be requested by the disclosing party from the concerned Fines, Penalties and Forfeitures Officer to enable the party to obtain the information or data.

(c) *Tender of actual loss of duties.* A person who discloses the circumstances of the violation shall tender any actual loss of duties. The disclosing party may choose to make the tender either at the time of the claimed prior disclosure, or within 30 days after Customs notifies the person in writing of his or her calculation of the actual loss of duties. The Fines, Penalties and Forfeitures Officer may extend the 30-day period if there is good cause to do so. The disclosing party may request that the basis for determining Customs asserted actual duty loss be reviewed by Headquarters, provided that the actual duty loss demanded by Customs exceeds $100,000 and is deposited with Customs, more than one year remains under the statute of limitations involving the shipments covered by the claimed disclosure, and the disclosing party has complied with all other prior disclosure regulatory provisions. A grant of review is within the discretion of Customs Headquarters in consultation with the appropriate field office, and such Headquarters review shall be limited to determining issues of correct tariff classification, correct rate of duty, elements of dutiable value, and correct application of any special rules (GSP, CBI, HTS 9802, etc.). The concerned Fines, Penalties and Forfeitures Officer shall forward appropriate review requests to the Chief, Penalties Branch, Customs Headquarters, Office of Regulations and Rulings. After Headquarters renders its decision, the concerned Fines, Penalties and Forfeitures Officer will be notified and the concerned Customs port will recalculate the loss, if necessary, and notify the disclosing party of any actual duty loss increases. Any increases must be deposited within 30 days, unless the local Customs office authorizes a longer period. Any reductions of the Customs calculated actual loss of duty shall be refunded to the disclosing party. Such Headquarters review decisions are final and not subject to appeal. Further, disclosing parties requesting and obtaining such a review waive their right to contest either administratively or judicially the actual loss of duties finally calculated by Customs under this procedure. Failure to tender the actual loss of duties finally calculated by Customs shall result in denial of the prior disclosure.

(d) *Effective time and date of prior disclosure.*—(1) If the documents that provide the disclosing information are sent by registered or certified mail, return-receipt requested, and are received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent by other methods, including in-person delivery, the disclosure shall be deemed to have been made at the time of

receipt by Customs. If the documents are delivered in person, the person delivering the documents will, upon request, be furnished a receipt from Customs stating the time and date of receipt.

(3) The provision of information that is not in writing but that qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time that Customs was provided with information that substantially complies with the requirements set forth in paragraph (b) of this section.

(e) *Addressing and filing prior disclosure.*—(1) A written prior disclosure should be addressed to the Commissioner of Customs, have conspicuously printed on the face of the envelope the words "prior disclosure," and be presented to a Customs officer at the Customs port of entry of the disclosed violation.

(2) In the case of a prior disclosure involving violations at multiple ports of entry, the disclosing party may orally disclose or provide copies of the disclosure to all concerned Fines, Penalties and Forfeitures Officers. In accordance with internal Customs procedures, the officers will then seek consolidation of the disposition and handling of the disclosure. In the event that the claimed "multi-port" disclosure is made to a Customs officer other than the concerned Fines, Penalties and Forfeitures Officer, the disclosing party must identify all ports involved to enable the concerned Customs officer to refer the disclosure to the concerned Fines, Penalties and Forfeitures Officer for consolidation of the proceedings.

(f) *Verification of disclosure.* Upon receipt of a prior disclosure, the Customs officer shall notify Customs Office of Investigations of the disclosure. In the event the claimed prior disclosure is made to a Customs officer other than the concerned Fines, Penalties and Forfeitures Officer, it is incumbent upon the Customs officer to provide a copy of the disclosure to the concerned Fines Penalties and Forfeitures Officer. The disclosing party may request, in the oral or written prior disclosure, that the concerned Fines, Penalties and Forfeitures Officer request that the Office of Investigations withhold the initiation of disclosure verification proceedings until after the party has provided the information or data within the time limits specified in paragraph (b)(4) of this section. It is within the discretion of the concerned Fines, Penalties and Forfeitures Officer to grant or deny such requests.

(g) *Commencement of a formal investigation.* A formal investigation of a violation is considered to be commenced with regard to the disclosing party on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of a violation existed. In the event that a party affirmatively asserts a prior disclosure (*i.e.*, identified or labeled as a prior disclosure) and is denied prior disclosure treatment on the basis that Customs had commenced a formal investigation of the disclosed violation, and Customs initiates a penalty action against the disclosing party involving the dis-

closed violation, a copy of a "writing" evidencing the commencement of a formal investigation of the disclosed violation shall be attached to any required prepenalty notice issued to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a.

(h) *Scope of the disclosure and expansion of a formal investigation.* A formal investigation is deemed to have commenced as to additional violations not included or specified by the disclosing party in the party's original prior disclosure on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of such additional violations existed. Additional violations not disclosed or covered within the scope of the party's prior disclosure that are discovered by Customs as a result of an investigation and/or verification of the prior disclosure shall not be entitled to treatment under the prior disclosure provisions.

(i) *Knowledge of the commencement of a formal investigation.*—(1) A disclosing party who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation a formal investigation has been commenced and:

(i) Customs, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a, so informed the person of the type of or circumstances of the disclosed violation; or

(ii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, had, either orally or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(iii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, requested specific books and/or records of the person relating to the disclosed violation; or

(iv) Customs issues a prepenalty or penalty notice to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a relating to the type of or circumstances of the disclosed violation; or

(v) The merchandise that is the subject of the disclosure was seized; or

(vi) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry, the person has received oral or written notification of Customs finding of a violation.

(2) The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB Control No.
* * * *	* *	*
§ 162.74	Prior Disclosure	1515–0212
* * * *	* *	*

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: May 12, 1998.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, May 28, 1998 (63 FR 29126)]

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19 CFR Part 12

(T.D. 98–50)

RIN 1515–AC28

EMISSIONS STANDARDS FOR IMPORTED NONROAD ENGINES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations, in conformance with regulations of the U.S. Environmental Protection Agency (EPA), in order to include marine spark-ignition engines among those imported nonroad engines that are subject to compliance with applicable EPA emissions standards required by law. In addition, the Customs Regulations in this regard are further amended by eliminating the unnecessary, extensive replication of the particular admission requirements for subject nonroad engines that are already contained in the EPA regulations.

EFFECTIVE DATE: May 28, 1998.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Field Operations, (202–927–0192).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.)*, which has long authorized the Environmental Protection Agency (EPA) to regulate on-highway motor vehicle and engine emissions, was amended in 1990 to extend EPA's regulatory authority to include as well nonroad engines and related vehicles and equipment (see 42 U.S.C. 7521–7525, 7541–7543, 7547, 7549, 7550, 7601(a)).

In brief, EPA was given authority, *inter alia*, to regulate those classes or categories of new nonroad engines and associated vehicles and equipment that contribute to air pollution, if such nonroad emissions were determined to be significant.

To this end, the EPA issued regulations in 40 CFR parts 89 and 90 that established emissions standards for new nonroad compression-ignition engines at or above 50 horsepower (37 kilowatts) as well as new nonroad spark-ignition engines at or below 25 horsepower (19 kilowatts) (see 59 FR 31306 (June 17, 1994) and 60 FR 34582 (July 3, 1995), respectively, for the background and development of these EPA regulations).

By a final rule document published in the Federal Register on August 27, 1996 (61 FR 43960), Customs amended its regulations to add a new § 12.74 (19 CFR 12.74) that conformed to the regulations adopted by the EPA in order to ensure the compliance of the aforementioned imported nonroad engines with applicable EPA emissions standards required by law.

The EPA has now issued regulations in 40 CFR part 91, establishing emissions standards as well for new marine spark-ignition engines (see 61 FR 52088 (October 4, 1996) for the background and development of the EPA regulations).

Accordingly, § 12.74 is hereby amended to include marine spark-ignition engines among those imported nonroad engines that are subject to applicable EPA emissions standards. Furthermore, Customs has determined to abbreviate significantly § 12.74 by simply referencing the EPA regulations concerned, and eliminating the unnecessary, extensive replication of the particular admission requirements for subject nonroad engines that are already contained in the EPA regulations.

INAPPLICABILITY OF PUBLIC NOTICE AND COMMENT AND DELAYED EFFECTIVE DATE REQUIREMENTS, THE REGULATORY FLEXIBILITY ACT, AND EXECUTIVE ORDER 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law and regulation as noted above, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public

procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*. Nor do these amendments meet the criteria for a "significant regulatory action" under E.O. 12866.

LIST OF SUBJECTS IN 19 CFR PART 12

Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Vehicles.

AMENDMENTS TO THE REGULATIONS

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12, and the specific authority citation for § 12.74, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * * * *

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

* * * * * * *

2. Section 12.74 is revised to read as follows:

§ 12.74 Nonroad engine compliance with Federal antipollution emission requirements.

(a) *Applicability of EPA regulations.* The requirements governing the importation of nonroad engines subject to conformance with applicable emissions standards of the U.S. Environmental Protection Agency (EPA) are contained in EPA regulations, issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.)*. These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad engines, as follows:

(1) For nonroad compression-ignition engines at or above 37 kilowatts, see 40 CFR part 89, subpart G;

(2) For nonroad spark-ignition engines at or below 19 kilowatts, see 40 CFR part 90, subpart G; and

(3) For marine spark-ignition engines, see 40 CFR part 91, subpart H.

(b) *Admission of nonconforming nonroad engines.*

(1) *EPA declaration required.* EPA Form 3520–21, "Importation of Nonroad Engines and Nonroad Engines Incorporated Into Nonroad Equipment or Vehicles, Subject to Federal Air Pollution Regulations", must be completed by the importer and retained on file by him before making a customs entry for such nonroad engines/equipment/vehicles.

(2) *Retention and submission of records to Customs.* Documents supporting the information required in the EPA declaration must be retained by the importer for a period of at least 5 years in accordance with § 162.1c of this chapter and shall be provided to Customs upon request.

(c) *Release under bond.* (1) *Conditional admission.* If the EPA declaration states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraphs (c)(3)(i)—(c)(3)(iv) of this section, under which the engine must be conditionally admitted under bond, the entry for such engine shall be accepted only if a bond is given on Customs Form 301 containing the conditions set forth in § 113.62 of this chapter for the presentation of an EPA statement that the engine has been brought into conformity with Federal emissions requirements.

(2) *Final admission.* Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraphs (c)(3)(i)—(c)(3)(iv) of this section, the importer or consignee shall deliver to the port director the prescribed statement. The statement shall be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of Customs may allow for good cause shown. Otherwise, the importer or consignee shall deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable Customs laws and regulations (see paragraph (e) of this section). If such engine is not redelivered within 5 days following the allotted period, liquidated damages shall be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been taken under a single entry bond (see 40 CFR 89.612–96(d), 90.613(c) & (d), 91.705(c) & (d)).

(3) *Exemptions.* The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a Customs bond is required, are as follows:

(i) Repairs or alterations (see 40 CFR 89.611–96(b)(1), 90.612(b)(1), 91.704(b)(1));

(ii) Testing (see 40 CFR 89.611–96(b)(2), 90.612(b)(2), 91.704(b)(2));

(iii) Precertification (see 40 CFR 89.611–96(b)(3), 89.906); and

(iv) Display (see 40 CFR 89.611–96(b)(4), 90.612(b)(3), 91.704(b)(3)).

(d) *Notice of inadmissibility or detention.* If an engine is found to be inadmissible either before or after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, an engine which cannot be released merely due to a failure to furnish with the entry any documentary information as required by EPA shall be held in detention by the port director for a period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing information. An additional 30-day extension may be granted by the port director upon application for good cause shown. If at the expiration of a period not over 60 days the required documentation has not been filed, a notice of inadmissibility will be issued.

(e) *Disposal of engines not entitled to admission; prohibited importations.* A nonroad engine denied admission under EPA regulations shall

be disposed of consistent with such EPA regulations and in accordance with applicable Customs laws and regulations. The importation of nonroad engines otherwise than as prescribed under EPA regulations is prohibited.

DOUGLAS M. BROWNING,
Acting Commissioner of Customs.

Approved: May 6, 1998.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, May 28, 1998 (63 FR 29121)]

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19 CFR Part 24

(T.D. 98–51)

RIN 1515–AC26

AUTOMATED CLEARINGHOUSE CREDIT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to provide for payments of funds to Customs by Automated Clearinghouse (ACH) credit. Under ACH credit, a payer will be able to transmit daily statement, deferred tax, and bill payments electronically through a financial institution directly to a Customs account maintained by the Department of the Treasury. ACH credit allows the payer to exercise more control over the payment process, does not require the disclosure of bank account information to Customs, and expands the types of payments that may be made through ACH.

DATES: This interim rule is effective June 29, 1998. Comments must be received before July 27, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ben Robbin, Financial Systems Division, Financial Management Services Center, Office of Finance, U.S. Customs Service (317–298–1520, ext. 1428).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 206 of the Financial Management Service (FMS) Regulations (31 CFR Part 206) concerns, among other things, the management of Federal agency receipts and disbursements and applies to all Government departments and agencies within the Executive Branch. Section 206.4(a) of the FMS Regulations (31 CFR 206.4(a)) sets forth the general rule that all funds are to be collected and disbursed by electronic funds transfer (EFT) when cost-effective, practicable, and consistent with current statutory authority. Section 206.2 of the FMS Regulations (31 CFR 206.2) defines EFT as follows:

> *Electronic funds transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Fed Wire transfers, Automated Clearing House (ACH) transfers, transfers made at automatic teller machines (ATM) and Point-of-Sale (POS) terminals (to include use of the Government small purchase card), and other means of credit card transactions.

Section 24.25 of the Customs Regulations (19 CFR 24.25) concerns "statement processing" and "automated clearinghouse (ACH)" and thus, by virtue of the latter, in part implements the policy reflected in the FMS Regulations referred to above. Paragraph (a) of § 24.25 describes statement processing as a voluntary automated program which allows participants in the Automated Broker Interface (ABI) to group entry/entry summaries and entry summaries on a daily basis and to pay the related duties, taxes and fees with a single payment. Paragraph (a) of § 24.25 further provides that the preferred method for such single payment is by ACH, except where the importer of record has provided (normally, to a customs broker who files the entry on behalf of the importer) a separate check payable to Customs for the Customs charges.

The ACH payment process currently set forth in § 24.25 is a debit payment method (hereinafter referred to as "ACH debit") whereby ABI filers provide Customs with the bank routing and account number from which ACH payments are to be electronically debited by a Treasury-designated ACH processor bank upon receipt of an electronic message sent by Customs. However, following implementation of statement processing and ACH debit on January 1, 1990, Customs found that the ACH debit procedure did not achieve all of the intended results because some daily statement payers have remained reluctant to provide the U.S. Government with their bank account information and, therefore, such parties still make their daily statement payments by check. Moreover, the current ACH debit process is limited to daily statement payments and thus does not cover bill payments under § 24.3 of the Customs Regulations (19 CFR 24.3) and deferred tax payments under

§ 24.4 of the Customs Regulations (19 CFR 24.4), which are accepted primarily through check (through a Customs lockbox) and Fed Wire respectively, and for which Customs believes some payers would prefer to use the ACH environment.

The FMS and Riggs National Bank of Washington, D.C. have developed another ACH payment procedure for the Federal Government, referred to herein as "ACH credit". This process allows the Federal Government to receive ACH payments initiated directly by the private sector payer. This process benefits payers by allowing them to effect payment without having to disclose bank account information to the Government and by allowing them to maintain more control over the origination and timing of their payments. The ACH credit process benefits the Government in that transit routing and bank account authorization does not have to be obtained from the remitter and the Government does not have to do anything to effect an individual payment.

Customs has received authorization from the FMS to receive ACH credit payments, and appropriate modifications have been made to the Automated Commercial System (ACS) to accept the transfer of payment and remittance information from Riggs Bank and to apply those payments to the appropriate receivables. Since the ACH credit procedure represents a significant enhancement of the electronic entry and payment process and provides important benefits to both Customs and the trade community, Customs believes that it should be made available to the public, for use on a voluntary basis, at the earliest practicable date and that it should encompass not only daily statement payments but also bill payments and deferred tax payments.

The purpose of this document is to provide an appropriate regulatory context for the ACH credit procedure. The ACH credit procedure and the regulatory changes reflected in this document are discussed in more detail below.

How ACH Credit Works

Companies and other payers interested in enrolling in the ACH credit program must indicate such interest by providing the following information to Customs: Payer name and address; payer contact name(s); payer telephone number(s) and facsimile number; payer identification number (importer number, Social Security number, or Customs assigned number); and 3-digit filer code. This information should be sent to the Financial Management Services Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, by mail or facsimile transmission (317–298–1013). Pre-printed enrollment forms for this purpose, together with detailed information regarding the ACH credit program, are available from the Financial Management Services Center contact person identified earlier in this document.

The payer and its financial institution are responsible for determining the methodology used for originating the ACH credit payment (telephone or computer generated instructions, diskettes, etc.) and the methodology used for notifying the payer that its account has been

charged. The financial institution that the payer uses must be capable of structuring ACH credit transactions according to the payment and addendum conventions prescribed by the National Automated Clearinghouse Association, that is, the financial institution must use either the CCD+ or the CTX payment formats and must use the TXP data segment for the payment-related information within the addendum record for each daily statement or deferred tax or bill payment. Payments transmitted by ACH credit must be formatted as described in the format instructions provided by the Financial Management Services Center.

Following receipt of the enrollment information, the Financial Management Services Center provides the payer with specific ACH credit routing and format instructions and advises the payer that the following information must be provided to its financial institution when originating its payments: Company name; company contact person name and telephone number; company identification number (coded Internal Revenue Service employer identification number or DUNS number or Customs assigned number); company payment description; effective date; receiving company name *(i.e.* U.S. Customs); transaction code; Customs transit routing number and Customs account number (provided to the payer by Customs); payment amount; payer identifier (importer number or Social Security number or Customs assigned number or filer code if the payer is a broker who is the importer of record); document number (daily statement number, entry or warehouse withdrawal number for a deferred tax payment, or bill number); payment type code (which identifies the payment as a daily statement payment or deferred tax payment or bill payment); settlement date (no later than the payment due date); and document payment amount.

Before effecting any payments of funds through the ACH credit process, the payer is instructed by Customs to follow a trial run "prenotification" procedure, involving a non-funds message transmission through its financial institution to the Customs account, in order to validate the routing instructions. Once the routing instructions are validated, the Financial Management Services Center notifies the payer that the prenotification transaction has been accepted and that payments may be originated on or after the tenth calendar day following the prenotification acceptance date.

The payer obtains the source data (the document number and amount) for the ACH credit payment transaction from the daily statement or from the entry or warehouse withdrawal documentation in the case of a deferred tax or from the Customs bill. The payer, through its financial institution, originates payment information to the Customs account no later than one business day prior to the payment due date (daily statement payments are due no later than ten working days after release or withdrawal of the merchandise; deferred tax payments are due on the 14th day or 29th day of the month, with special rules if the due date falls on a weekend or Federal holiday; bills must be paid no lat-

er than the late payment date appearing on the bill). The next day (the settlement date), the payer's account is charged by its financial institution and the payment is credited by Customs and applied to the appropriate daily statement or entry or warehouse withdrawal or bill as of that settlement date.

If daily statement payments are involved, a statement filer who is not the importer of record (and thus will not be making or authorizing the payment) must still obtain the preliminary statement through ABI and must still present the preliminary statement and the corresponding entry summaries (when paper is required) to the Customs location, as provided in § 24.25(c). However, the process differs in the case of payments to be made by ACH credit in that such a filer will provide the payer with the statement number and the statement amount at least one business day prior to the due date.

The payer is responsible for following the routing and format instructions provided by the Financial Management Services Center, and for ensuring the accuracy of the information provided to its financial institution, when originating its payment. Erroneous information provided by the payer (for example, non-standard formatting, incorrect document number, payment amount different from the amount due) will delay the prompt posting of the payment to the receivable. If a payer repeatedly provides erroneous information when originating payments, the payer may be advised in writing to refrain from using ACH credit and to submit its payments by bank draft or check pursuant to § 24.1 or by the ACH debit payment method under § 24.25.

Regulatory Implementation

In view of the fact that ACH credit is a voluntary program intended to provide flexibility, efficiency and related benefits to the trade community and to Customs, it appears appropriate to implement the ACH program as an interim rule, subject to public comment procedures before adoption of a final rule. Moreover, since present § 24.25 concerns only statement processing and describes ACH debit procedures whereas ACH credit will also apply to deferred tax and bill payments, Customs believes that it is preferable (1) to deal with ACH credit in a separate new § 24.26 and (2) to make conforming changes to present § 24.25 to reflect the adoption of the new section, including, where appropriate, the addition of the word "debit" to clarify the meaning of the references to ACH in that section.

COMMENTS

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regu-

lations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

INAPPLICABILITY OF PRIOR PUBLIC NOTICE AND COMMENT PROCEDURES

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. The ACH credit process implemented by this regulation is an entirely voluntary payment procedure that provides benefits to the public in that it facilitates the electronic entry and payment process, addresses some concerns of the public regarding existing electronic payments procedures, and has the overall effect of reducing the regulatory burden on the public.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* do not apply.

PAPERWORK REDUCTION ACT

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0218.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these regulations is in § 24.26. This information is required in connection with an election to use the ACH credit procedure for making electronic payments of funds to Customs. The information will be used by the U.S. Customs Service to ensure that payments to Customs are properly transmitted, received, and credited. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 17 hours.

Estimated average annual burden per respondent/recordkeeper: .083 hours.

Estimated number of respondents and/or recordkeepers: 200.

Estimated annual number of responses: 200.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, in-

cluding whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information. Comments should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

LIST OF SUBJECTS IN 19 CFR PART 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth above, Part 24, Customs Regulations (19 CFR Part 24), is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURES

1. The authority citation for Part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1450, 1624; 31 U.S.C. 9701.

* * * * * * *

2. In § 24.25:

a. The third sentence of paragraph (a) is amended by adding after "(ACH)" the words "debit or ACH credit";

b. The sixth sentence of paragraph (a) is amended by adding the words "debit (see paragraph (b)(2) of this section)" after "ACH" the first time it appears and adding at the end of the sentence before the period the words "; ACH credit is described in § 24.26";

c. The heading of paragraph (b)(2) is amended by adding after "Clearinghouse" the word "debit";

d. The first sentence of paragraph (b)(2) is amended by adding after "through ACH" the word "debit"; and

e. The first sentence of paragraph (c)(4) is amended by removing the words "ACH payment authorization" and adding, in their place, the words "ACH debit payment authorization or ACH credit payment".

3. Section 24.26 is added to read as follows:

§ 24.26 Automated Clearinghouse Credit.

(a) *Description*. Automated Clearinghouse (ACH) credit is an optional payment method that allows a payer to transmit statement process-

ing payments (see § 24.25) or deferred tax payments (see § 24.4) or bill payments (see § 24.3) electronically, through its financial institution, directly to the Customs account maintained by the Department of the Treasury.

(b) *Enrollment procedure.* A payer interested in enrolling in the ACH credit program must indicate such interest by providing the following information to the Financial Management Services Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278: Payer name and address; payer contact name(s); payer telephone number(s) and facsimile number; payer identification number (importer number or Social Security number or Customs assigned number); and 3-digit filer code.

(c) *Routing and format instructions.* Following receipt of the enrollment information, the Financial Management Services Center will provide the payer with specific ACH credit routing and format instructions and will advise the payer that the following information must be provided to its financial institution when originating its payments: Company name; company contact person name and telephone number; company identification number (coded Internal Revenue Service employer identification number or DUNS number or Customs assigned number); company payment description; effective date; receiving company name; transaction code; Customs transit routing number and Customs account number; payment amount; payer identifier (importer number or Social Security number or Customs assigned number or filer code if the payer is a broker who is the importer of record); document number (daily statement number, entry or warehouse withdrawal number for a deferred tax payment, or bill number); payment type code; settlement date; and document payment amount.

(d) *Prenotification procedure.* Before effecting any payments of funds through the ACH credit process, the payer must follow a prenotification procedure, involving a non-funds message transmission through its financial institution to the Customs account, in order to validate the routing instructions. When the routing instructions are validated, the Financial Management Services Center will notify the payer that the prenotification transaction has been accepted and that payments may be originated on or after the tenth calendar day following the prenotification acceptance date.

(e) *Payment origination procedures.*

(1) *General.* Once the payer has received authorization to begin originating ACH credit payments under paragraph (d) of this section, the payer, through its financial institution, must originate each payment transaction to the Customs account no later than one business day prior to the payment due date. The payer's account will be charged by the financial institution on the settlement date identified in the transaction. The payer is responsible for following the routing and format instructions provided by Customs and for ensuring the accuracy of the information when originating each payment. Improperly formatted or

erroneous information provided by the payer will delay the prompt posting of the payment to the receivable.

(2) *Procedures for daily statement filers*. The procedures set forth in § 24.25(c) for ABI filers using statement processing remain applicable when payment is effected through ACH credit. However, when the ABI filer is a customs broker who is not the importer of record and thus is not responsible for the payment, the ABI filer must provide the statement number and statement amount to the importer of record at least one business day prior to the due date so that the importer of record can originate the payment.

(f) *Date of collection*. The date that the ACH credit payment transaction is received by Customs shall be the collection date which equates to the settlement date. The appropriate daily statement or entry or warehouse withdrawal or bill shall be identified as paid as of that collection date.

(g) *Removal from the ACH credit program*. If a payer repeatedly provides improperly formatted or erroneous information when originating ACH credit payments, the Financial Management Services Center may advise the payer in writing to refrain from using ACH credit and to submit its payments by bank draft or check pursuant to § 24.1 or, in the case of daily statement payments, to use the ACH debit payment method under § 24.25.

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: May 5, 1998.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, May 28, 1998 (63 FR 29122)]

19 CFR Part 10

(T.D. 98–52)

RIN 1515–AC18

PROCEDURAL CHANGE REGARDING AMERICAN SHOOKS AND STAVES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by requiring the submission of a Customs Form (CF) 4455, Certificate of Registration, rather than a CF 3311, Declaration for Free Entry of Returned American Products, when shooks and staves produced in the United States are exported from the United States with the intention that they will be returned to the United States, exempt from duty, in the form of complete boxes or barrels in use as usual containers of merchandise. When boxes or barrels made from the exported American shooks and staves, for which a CF 4455 has been submitted, are imported, the importer of the boxes or barrels must use the CF 4455 as well to make such a claim. Shooks and staves produced in the United States that are exported and so returned are exempt from customs duties provided their identity is established by the proper submission of the CF 4455. The amendment helps to clarify the procedures regarding the free entry of such American produced shooks and staves returned to the United States.

EFFECTIVE DATE: July 2, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Wygant, Office of Field Operations, 202–927–1167.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 10.5, Customs Regulations (19 CFR 10.5) provides that shooks and staves produced in the United States and returned in the form of complete boxes or barrels in use as the usual containers of merchandise are exempt from any duties imposed by the tariff laws upon similar containers made of foreign shooks or staves, provided their identity is established under the regulations.

Paragraph (d) of § 10.5 provides that an exporter of shooks or staves in respect of which free entry is to be claimed when returned as boxes or barrels shall file a notice of intent to export on a Customs Form (CF) 3311 in triplicate with the director of the port of exportation at least 6 hours before the lading of the articles on the exporting vessel. The CF 3311 is a Declaration for Free Entry of Returned American Products.

Paragraph (e) of § 10.5 provides that the certification of exportation block of CF 3311 shall be completed in triplicate by the port director af-

ter verification from the manifest of the exporting vessel and the return of the lading officer. The original shall be forwarded by the port director to the consignee. The duplicate copy shall be given to the exporter and the triplicate copy shall be retained.

Paragraph (f) of § 10.5 provides that whenever boxes or barrels alleged to have been manufactured from American shooks or staves are shipped to the United States from a person abroad other than the one to whom the shooks and staves were exported from the United States, the importer shall be required to obtain from the foreign consignee to whom the shooks or staves were originally exported the CF 3311s covering the exportation of the shooks or staves from the United States, or an extract therefrom signed by such consignee, showing the number of shooks or staves covered by such CF 3311s, together with the number of superficial feet of such shooks or staves. Such CF 3311 or extract therefrom, shall be filed by the importer in connection with the entry of the boxes or barrels.

Section 10.6, Customs Regulations (19 CFR 10.6), provides that an importer, seeking an exemption from duty on account of boxes or barrels made from American shooks or staves, must make such a claim on a CF 3311 at the time of filing the entry.

It has come to Customs attention that the CF 3311 may no longer be the best form available for Customs to track the exportation of United States-produced shooks and staves intended to be returned to the United States in the form of complete boxes or barrels and the importation of the boxes or barrels made from those shooks and staves. Further, as the CF 3311 was modified in 1990 and no longer contains the certification of exportation block, which is specifically mentioned in § 10.5(e), the regulations regarding shooks and staves are unclear as to the procedures.

After consideration of the best way of tracking the exportation of shooks and staves and the importation of boxes or barrels made from United States-produced shooks and staves, Customs has determined that the CF 4455, the Certificate of Registration, is the best vehicle. Accordingly, Customs is amending §§ 10.5 and 10.6 to require the CF 4455 rather than the CF 3311 for tracking shooks and staves.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

This document does not meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866.

Inapplicability of Public Notice and Comment Requirements

Inasmuch as this amendment merely substitutes one Customs Form for another, pursuant to 5 U.S.C. 553(a)(2) and (b)(B), good cause exists for dispensing with the notice and public procedure thereon as unnecessary.

DRAFTING INFORMATION

The principal author of this document was Janet Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

SUBJECTS IN 19 CFR PART 10

Caribbean Basin Initiative, Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, Part 10 of the Customs Regulations (19 CFR Part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * * * *

2. Section 10.5 is amended by:

a. revising the heading;

b. removing in paragraph (d) the words "a notice of intent to export, Customs Form 3311" and by adding the words "a Certificate of Registration, Customs Form 4455" in their place;

c. revising the first sentence of paragraph (e); and

d. removing the Customs Form number "3311" wherever it appears in paragraphs (f) and (g) and by adding in its place "4455".

The revisions read as follows:

§ 10.5 Shooks and staves; cloth boards; port director's account.

* * * * * * *

(e) The Certificate of Registration, CF 4455, shall be completed in triplicate by the port director after verification from the manifest of the exporting vessel and the return of the lading officer. * * *

* * * * * * *

3. Section 10.6 is amended by removing the Customs Form number "3311" and by adding in its place "4455".

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: May 5, 1998.

JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, June 2, 1998 (63 FR 29953)]

(T.D. 98–53)

CUSTOMS BOND CANCELLATION STANDARDS FOR IMPORTS OF SOFTWOOD LUMBER FROM CANADA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Under section 623(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), the Secretary of the Treasury is required to publish guidelines for the cancellation of Customs bonds or charges thereunder. On February 26, 1997, Customs published T.D. 97–9 in the Federal Register (62 FR 8620) setting forth interim amendments to the Customs Regulations concerning the entry of certain softwood lumber products from Canada. Those amendments included additions to the conditions of the basic importation bond (19 CFR 113.62) to cover the production of, and liability for liquidated damages for failure to produce, export permit information pertaining to such softwood lumber products. This document publishes guidelines for cancellation of bond charges arising from such defaults.

EFFECTIVE DATE: These guidelines will take effect on June 2, 1998, and shall be applicable to all cases which are currently open at the petition or supplemental petition stage.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202–927–2344).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 1904 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 102 Stat. 1107) amended section 623(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), to require that the Secretary of the Treasury publish guidelines establishing standards for setting the terms and conditions for cancellation of Customs bonds or charges thereunder. The authority to promulgate such guidelines had been delegated to the Commissioner of Customs by Paragraph 1 of Treasury Department Order No. 165, revised (T.D. 53654). Guidelines pursuant to section 623(c) were initially published by Customs in the Federal Register in T.D. 89–48 on April 21, 1989 (54 FR 16182), and those guidelines were subsequently revised and republished in their entirety in T.D. 94–38 which appeared in the Federal Register on April 14, 1994 (59 FR 17830).

On February 26, 1997, Customs published T.D. 97–9 in the Federal Register (62 FR 8620) setting forth interim amendments to the Customs Regulations concerning the entry of certain softwood lumber products from Canada. Those amendments included the addition of a new § 12.140 (19 CFR 12.140) which sets forth special entry require-

ments for the subject lumber, including the obligation of the importer of record to obtain and provide to Customs information regarding the issuance of a Canadian export permit for the lumber. T.D. 97–9 also amended the provisions of the basic importation bond in § 113.62 (19 CFR 113.62) by the addition of a new paragraph (k) (with existing paragraph (k) redesignated as paragraph (l)) and by the addition of a new subparagraph (5) under newly designated paragraph (l). New paragraph (k) obligates the bond principal, as required by new § 12.140(a), to assume the obligation to ensure within 20 working days of release of the merchandise, and establish to the satisfaction of Customs, that the applicable export permit has been issued by the Government of Canada. Under new paragraph (l)(5), failure of the bond principal to meet the paragraph (k) obligation will result in assessment of liquidated damages equal to $100 per thousand board feet of the imported lumber.

In accordance with the provisions of section 623(c), this document sets forth standards for the cancellation of claims for liquidated damages assessed under §§ 12.140, 113.62(k) and 113.62(l)(5). These standards distinguish those claims in which the required export permits are presented in an untimely fashion from those instances where the export permits are not presented at all. The standards permit cancellation of liquidated damages incurred for late presentation of the necessary information upon payment of an amount between 25 and 50 percent of the claim but not less than $500 and not more than $3,000 per entry depending upon the experience of the importer and the number of violations incurred by the importer as compared to the number of importations made. If the claim is issued for $500 or less, no relief will be granted. If the necessary information is never provided, the claim will be collected in full. These claims for liquidated damages may only be assessed with regard to entries filed subsequent to the effective date of the interim regulations.

The text of the new guidelines is set forth below:

GUIDELINES FOR CANCELLATION OF CLAIMS FOR LATE FILING OR FAILURE TO FILE SOFTWOOD LUMBER INFORMATION (19 CFR 12.140, 19 CFR 113.62(k), 19 CFR 113.62(l)(5))

A. Late presentation of export permit information. Claims for liquidated damages for late presentation of export permit information shall be processed in accordance with the following guidelines.

1. Modified CF–5955A. Notices of liquidated damages incurred may be issued on a modified CF–5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition.

b. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The Fines, Penalties, and Forfeitures Officer shall grant full relief when the petitioner

demonstrates that the violation did not occur or occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or occurred solely as a result of Customs error, the Fines, Penalties, and Forfeitures Officer may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. Cancellation of claims for late presentation of export permit information. Liquidated damages incurred for late presentation of the necessary information may be cancelled upon payment of an amount between 25 and 50 percent of the claim but not less than $500 and not more than $3,000. Such amount may be afforded as an Option 1 amount. Mitigation shall be based upon the experience of the importer and the number of violations incurred compared with the number of importations made. No relief shall be granted from any claim issued for $500 or less.

B. Failure to present export permit information. If the importer fails to present the appropriate export permit information, no relief from the claim for liquidated damages will be granted unless the importer can show that the information was not required or that the violation occurred solely as a result of Customs error. Upon presentation of proof which satisfies the Fines, Penalties, and Forfeitures Officer that the information was not required or that the violation occurred solely as a result of Customs error the claim shall be cancelled without payment.

Dated: May 27, 1998.

SAMUEL H. BANKS,
Acting Commissioner of Customs.

[Published in the Federal Register, June 2, 1998 (63 FR 30039)]

U.S. Customs Service

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

DECLARATION BY THE PERSON WHO PERFORMED THE PROCESSING OF GOODS ABROAD

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration by the Person Who Performed the Processing of Goods Abroad. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 21, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or

start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration by the Person Who Performed the Processing of Goods Abroad

OMB Number: 1515–0110

Form Number: N/A

Abstract: This declaration, prepared by the foreign processor, submitted by the filer with each entry, provides details on the processing performed abroad and is necessary to assist Customs in determining whether the declared value of the processing is accurate.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 7,500

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 1,880

Estimated Total Annualized Cost on the Public: N/A

Dated: May 18, 1998.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, May 22, 1998 (63 FR 28449)]

PROPOSED COLLECTION; COMMENT REQUEST

IMPORTATION BOND STRUCTURE

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Importation Bond Structure. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 21, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Importation Bond Structure
OMB Number: 1515–0144
Form Number: N/A
Abstract: The bond is used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of merchandise through Customs; and to provide legal recourse for the Government for noncompliance with Customs laws and regulations and the laws and regulations of other agencies which are enforced by Customs.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 590,250
Estimated Time Per Respondent: 15 minutes
Estimated Total Annual Burden Hours: 147,563
Estimated Total Annualized Cost on the Public: N/A

Dated: May 18, 1998.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, May 22, 1998 (63 FR 28448)]

PROPOSED COLLECTION; COMMENT REQUEST

U.S./ISRAEL FREE TRADE AGREEMENT

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S./Israel Free Trade Agreement Importation Bond Structure. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 21, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: U.S./Israel Free Trade Agreement

OMB Number: 1515–0192

Form Number: N/A

Abstract: This collection is used to ensure conformance with the provisions of the U.S./Israel Free Trade Agreement for duty free entry status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 34,500
Estimated Time Per Respondent: 10 minutes
Estimated Total Annual Burden Hours: 7,505
Estimated Total Annualized Cost on the Public: N/A

Dated: May 18, 1998.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, May 22, 1998 (63 FR 28449)]

PROPOSED COLLECTION; COMMENT REQUEST

DECLARATION OF ULTIMATE CONSIGNEE THAT ARTICLES WERE EXPORTED FOR TEMPORARY SCIENTIFIC OR EDUCATIONAL PURPOSES

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 21, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44

U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

OMB Number: 1515–0104

Form Number: N/A

Abstract: The "Declaration of Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes" is used to provide duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 55

Estimated Time Per Respondent: 30 minutes

Estimated Total Annual Burden Hours: 27

Estimated Total Annualized Cost on the Public: N/A

Dated: May 18, 1998.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, May 22, 1998 (63 FR 28448)]

PUBLIC MEETINGS IN NEW ORLEANS AND HOUSTON ON VESSEL ENTRANCE AND CLEARANCE PROCEDURES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of public meetings.

SUMMARY: The United States Customs Service will be holding two public meetings regarding a recent policy determination regarding the entrance and clearance requirements for vessels and aircraft servicing offshore operations beyond the territorial waters of the United States. One meeting will be held in New Orleans, Louisiana, and the other will be held in Houston, Texas. This document announces the dates, times and other particulars of the meetings. Questions which one wishes to have addressed at the meetings may be communicated in writing to Customs Headquarters prior to the meetings.

DATES: The meetings will be held at the following dates and times:

For the Houston meeting: June 15, 1998, from 1:00 p.m. until 4:00 p.m.

For New Orleans meeting: June 17, 1998, from 1:00 p.m. until 4:00 p.m.

For submitted written comments to be addressed at meetings: Comments must be received no later than the close of business June 1, 1998.

ADDRESSES: The meetings will be held at the following locations:

For the Houston meeting: Port of Houston Authority Main Office Bldg., 111 East Loop North, First Floor Training Room, Houston, Texas.

For the New Orleans meeting: New Orleans Customshouse, 423 Canal Street, Room 223, New Orleans, Louisiana.

Written comments should be submitted to: Office of Field Operations, Trade Compliance, Attn: William Scopa, U.S. Customs Service, 1300 Pennsylvania Avenue, Washington, D.C. 20229, or faxed to the attention of William Scopa at (202) 927–1356.

FOR FURTHER INFORMATION CONTACT:

Regarding questions about attending the Houston meeting: please call (281) 985–6700.

Regarding questions about attending the New Orleans meeting: please call (504) 670–2391.

For information regarding the entrance and clearance requirements: *for operational or policy concerns*: contact William Scopa at (202) 927–3112; *for regulatory issues*: contact Larry Burton at (202) 927–1287.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Recently, there has been concern regarding uniform Customs enforcement of the report of arrival requirements set forth in 19 U.S.C.

1433 for any vessel which has received merchandise while outside of the territorial seas; the formal entry requirements set forth in 19 U.S.C. 1434 for any vessel which has delivered or received merchandise while outside the territorial seas; and the corresponding clearance statute, 46 U.S.C. App. 91. The concern is also applicable, through 19 U.S.C. 1644, to enforcement of the report of arrival requirements, formal entry requirements and clearance requirements for aircraft receiving and delivering merchandise while outside the territorial seas. A policy determination by the Customs Service regarding its interpretation of these statutory requirements has had a substantial impact on both Customs and the trade.

Much of the concern resulted from an interpretation by the Customs Service which exempted vessels and aircraft transporting vessel supplies, bunkers, parts, equipment and crew, out beyond the territorial sea from entrance and clearance requirements. This interpretation applied not only to such transactions involving the delivery or receipt of the mentioned items to fixed-site oil rigs, but to non-fixed vessels as well.

Customs reexamined the pertinent statutes and determined that the exemptions for the delivery or receipt of vessel supplies, bunkers, parts, equipment and crew to non-fixed vessels located beyond the territorial sea cannot be sustained. It became necessary to immediately implement the suspension of this exemption. The pertinent statutes are clear and unambiguous and it would not be proper for Customs to delay their uniform enforcement.

Customs still, however, holds that vessels or aircraft delivering or receiving goods or passengers to or from fixed-site rigs are not subject to entrance and clearance requirements unless unentered foreign goods are involved in the transportation. Such an interpretation is consistent with the Outer Continental Shelf Lands Act.

Customs recognizes the fact that there has been an increase in commerce involving vessels and aircraft supplying necessary goods and services to numerous domestic and foreign commercial operations just beyond our territorial waters, especially in the Gulf of Mexico. Customs is contemplating providing for less burdensome entry and clearance procedures for vessels and aircraft engaged in these types of activities within the boundaries of the law.

Before beginning such procedures, Customs believes it would be beneficial both to the government and to private entities to hold public meetings on this issue to allow all interested parties an opportunity to be heard. The public forums will provide Customs with the opportunity to fully explain the extent of the recent policy determination.

Since the impact of the Customs policy is most heavily felt by ports in the Gulf of Mexico, public meetings will be held at the ports of New Orleans, Louisiana, and Houston, Texas.

At the meetings, personnel from Customs Headquarters will be available to answer questions regarding the applicability of the laws and to

discuss the possibility of modifying vessel and aircraft entrance and clearance procedures. Questions relating to the entrance and clearance requirements under the new policy may be sent to Customs prior to the meetings. Such questions should be sent to Customs at the address or fax number set forth at the beginning of this document, and must be received no later than the close of business on June 1, 1998, in order to be addressed at the meetings.

Space at the meetings will be limited. Attendance will be accommodated on a first-come basis.

Dated: May 19, 1998.

ROBERT S. TROTTER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, May 22, 1998 (63 FR 28450)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 27, 1998.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF CERTAIN MEAT OF SWINE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify three rulings pertaining to the tariff classification of certain meat of swine. Comments are invited on the correctness of the proposed modifications.

DATE: Comments must be received on or before July 10, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to and may be inspected at the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch, Commercial Rulings Division, (202) 927–1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify three rulings pertaining to the classification of certain meat of swine, namely, back pork bacon, cured pork middles, and cured bacon. Customs invites comments on the correctness of the proposed modifications.

In New York Ruling Letter (NY) B82748, issued on March 11, 1997, Customs ruled that certain forms of swine meat were classified under subheading 0210.12.0020, Harmonized Tariff Schedule of the United States (Annotated)(HTSUSA), a provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Bellies (streaky) and cuts thereof, Other" now dutiable at 1.7 cents per kilogram as products of Denmark. NY B82748 is set forth in "Attachment A" to this document.

In NY A80393, issued on March 7, 1996, Customs ruled that frozen, rindless, cured, smoked or unsmoked, back pork bacon slabs were classified under subheading 0210.12.0020, HTSUSA, a provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Bellies (streaky) and cuts thereof, Other" now dutiable at 1.7 cents per kilogram as a product of Denmark. NY A80393 is set forth in "Attachment B" to this document.

In NY 818468, issued on January 30, 1996, Customs ruled that frozen, rindless, smoked back pork bacon was classified under subheading 0210.12.0020, HTSUSA, a provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Bellies (streaky) and cuts thereof, Other" now dutiable at 1.7 cents per kilogram as a product of Denmark. NY 818468 is set forth in "Attachment C" to this document.

Upon review of these rulings, Customs has discovered an error in the classification with respect to the products classified in subheading 0210.12.0020. These products should have been classified in subheading 0210.19.0090, HTSUSA, the provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Other, Other" now also dutiable at 1.7 cents per kilogram.

Customs intends to modify NY B82748, NY A80393, and NY 818468 to reflect the proper classification of all the identified products in subheading 0210.19.0090, HTSUSA. Headquarters Ruling Letters (HQ) 960584, HQ 960585, and HQ 960586, modifying NY B82748, NY A80393, and NY 818468 respectively are set forth as Attachments "D", "E" and "F" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: May 22, 1998.

JOHN T. ROTH,
(for John A. Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, March 11, 1997.

CLA–2–02:RR:NC:2:231 B82748
Category: Classification
Tariff No. 0210.12.0020 and 0210.19.0090

MR. GURMEJ SINGH
JB FOODS
159 Bayne Crescent
Cambridge, Ontario N1T 1K4
Canada

Re: The tariff classification of bacon from Denmark.

DEAR MR. SINGH:

In your letter, dated February 25, 1997, you have requested a tariff classification ruling. The merchandise is described thus:

1. Frozen, rindless, back pork bacon—The ingredients are backs, water, salt, sodium nitrite, and sodium ascorbate. During processing, pork loins with belly strips are trimmed of rind; loin ribs are excised, and superfluous fat and bone remnants are removed.

2. Frozen, rindless, smoked, back pork bacon—The ingredients are backs, water, salt, sodium nitrite, and sodium ascorbate. During processing, pork loins with belly strips are trimmed of rind; loin ribs are excised, and superfluous fat and bone remnants are removed.

3. Boneless, cured pork middles with rind on—The ingredients are middles, water, salt, sodium nitrite, and sodium ascorbate. Ribbones are cut off by sheet ribbing. Belly fat is excised.

4. Smoked pork bacon with rind on—The ingredients are pork, water, salt, sodium nitrite, and sodium ascorbate. Ribbones are cut off by sheet ribbing. Belly fat is removed.

5. Boneless, cured pork leg with rind on—The ingredients are boneless pork leg, water, salt, sodium nitrite, and sodium ascorbate. Bones are removed by tunnel boring. Flank fat, flank meat and shank meat are cut off.

The applicable subheading for the "frozen, rindless, back pork bacon," "frozen, rindless, smoked, back pork bacon, "boneless, cured pork middles with rind on," and "smoked pork bacon with rind on," will be 0210.12.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal, meat of swine, bellies (streaky) and cuts thereof, bacon. The rate of duty will be 1.8 cents per kilogram.

The applicable subheading for the "boneless, cured pork leg with rind on," will be 0210.19.0090, HTS, which provides for meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal, meat of swine, other, other. The rate of duty will be 1.8 cents per kilogram.

In your letter you have inquired about acceptable country of origin marking for bacon from Denmark. A marked sample was not submitted with your letter for review.

The marking statute, section 304, Tariff Act of 1930, as amended (19 USC 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

As provided in section 134.41(b), Customs Regulations [19 CFR 134.41 (b)], the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

With regard to the permanency of a marking, section 134.41(a), Customs Regulations [19 CFR 134.41(a)], provides that as a general rule, marking requirements are best met by marking that is worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent, so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ralph Conte at (212) 466–5759.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 7, 1996.

CLA–2–02:RR:NC:FC:231 A80393
Category: Classification
Tariff No. 0210.12.0020

MR. GURMEJ SINGH
JB FOODS
159 Bayne Crescent
Cambridge, Ontario N1T 1K4
Canada

Re: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of bacon from Denmark; Article 509.

DEAR MR. SINGH:

In your letter, dated February 7, 1996, you requested a ruling on the status of bacon from Denmark under the NAFTA. The product is frozen, rindless, cured, smoked or unsmoked, back pork bacon slabs. The ingredients are backs, water, salt, sodium nitrite, and sodium ascorbate. During processing, pork loins with belly strips are trimmed of rind; loin ribs are excised, and superfluous fat and bone remnants are removed.

The pork back bacon slabs will be exported from Denmark to Canada. In Canada further processing procedures will take place, and then the finished product will be imported into the United States.

The further processing procedures that will take place in Canada are described thus:

1. The temperature of the frozen back pork bacon slabs will be reduced from –5 degrees Centigrade to –7 degrees Centigrade.
2. Merchandise will be sliced.
3. The finished product will be vacuum packed in packaging of various sizes and weight.
4. Forty pound boxes will be stacked on skids for transportation.

The applicable tariff provision for the bacon will be 0210.12.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal, meat of swine, bellies (streaky) and cuts thereof, bacon. The general rate of duty will be 1.9 cents per kilogram.

The merchandise does not qualify for preferential treatment under the NAFTA because one or more of the non-originating materials used in the production of the goods will not undergo the change in tariff classification required by General Note 12 (t)/2, HTSUSA.

The marking rules used for determining whether a good is a good of a NAFTA country are contained in TD 94–4 (adding a new Part 102, Customs Regulations). Part 102 of the interim amendments to the Customs Regulations, sets forth the "NAFTA Marking Rules" for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the interim regulations articulates the required hierarchy for determining country of origin for marking purposes.

Section 102.11(a)(3) states that the country of origin of a good is the country in which "each foreign material incorporated in that good undergoes an applicable change in tariff

classification set out in Section 102.20, and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied." Section 102.20(a) articulates the tariff shifts that are required for merchandise that is classifiable in Chapter 2, HTS.

Applying the NAFTA Marking Rules set forth in Part 102 of the interim regulations to the facts of this case, we find that, for marking purposes, the imported bacon is a good of Denmark, a non-NAFTA country.

This merchandise is not subject to quota restrictions at this time.

Questions regarding import regulations administered by the U.S. Department of Agriculture may be addressed to that agency at the following location:

U.S. Department of Agriculture
A.P.H.I.S., Veterinary Services
Federal Building, Room 756
6505 Belcrest Road
Hyattsville, MD 20782

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be attached to the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ralph Conte at (212) 466–5759. If you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1301 Constitution Ave., NW, Franklin Court, Washington, DC 20229.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, January 30, 1996.

CLA–2–02:RR:NC:FC:231 818468
Category: Classification
Tariff No. 0210.12.0020

MR. GURMEJ SINGH
JB FOODS
159 Bayne Crescent
Cambridge, Ontario N1T 1K4
Canada

Re: The tariff classification of bacon from Denmark.

DEAR MR. SINGH:

In your letter, dated January 15, 1996, you requested a tariff classification ruling.

The product is rindless, smoked, back pork bacon. The ingredients are backs, water, salt, sodium nitrite, and sodium ascorbate. During processing, pork loins with belly strips are trimmed of rind; loin ribs are excised, and superfluous fat and bone remnants are removed.

The applicable subheading for the bacon will be 0210.12.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal, meat of swine, bellies (streaky) and cuts thereof, bacon. The rate of duty will be 1.9 cents per kilogram.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be attached to the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ralph Conte at (212) 466–5759.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 960584 JGB
Category: Classification
Tariff No. 0210.19.0090

MR. GURMEJ SINGH
JB FOODS
159 Bayne Crescent
Cambridge, Ontario N1T 1K4
Canada

Re: Modification of NY B82748; tariff classification of bacon from Denmark.

DEAR MR. SINGH:

This is in reference to New York Ruling Letter (NY) B82748, issued to you on March 11, 1997, concerning the classification of bacon products from Denmark.

Facts:

In New York Ruling Letter (NY) B82748, issued March 11, 1997, Customs ruled that (1) frozen, rindless, back pork bacon and (2) frozen, rindless, *smoked*, back pork bacon would be properly classified under subheading 0210.12.0020, Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA), a provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Bellies (streaky) and cuts thereof, Other" now dutiable at 1.7 cents per kilogram as products of Denmark.

Upon review of this ruling, Customs has discovered an error in the classification with respect to the two products enumerated above. Those products should have been classified in subheading 0210.19.0090, HTSUSA, the provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Other, Other", dutiable at 1.7 cents per kilogram.

Issue:

Whether the identified products are classified as "Bellies and cuts thereof" or as other than hams, shoulders, and bellies.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs.

This matter is governed by GRI 6, in that the choice in classification is between two subheadings at the 6-digit level. In this case, the named provision, "bellies" does not describe

the product in that only a small portion of belly strip is left attached to the back. Therefore, the products are "other" than bellies and are classified in subheading 0210.19.0090, HTSUSA.

Holding:

NY B82748, issued March 11, 1997, is modified to reclassify "1. Frozen, rindless, back pork bacon" and "2. Frozen, rindless, smoked, back pork bacon" in subheading 0210.19.0090, HTSUSA, the provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Other, Other", dutiable at 1.7 cents per kilogram.

JOHN A. DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 960585 JGB
Category: Classification
Tariff No. 0210.19.0090

MR. GURMEJ SINGH
JB FOODS
159 Bayne Crescent
Cambridge, Ontario N1T 1K4
Canada

Re: Modification of NY A80393; tariff classification of bacon from Denmark.

DEAR MR. SINGH:

This is in reference to New York Ruling Letter (NY) A80393, issued to you on March 7, 1996, concerning the classification of bacon products from Denmark.

Facts:

In NY A80393, issued March 7, 1996, Customs ruled that frozen, rindless, cured, smoked or unsmoked back pork bacon slabs would be properly classified under subheading 0210.12.0020, Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA), a provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Bellies (streaky) and cuts thereof, Other" now dutiable at 1.7 cents per kilogram as products of Denmark.

Upon review of this ruling, Customs has discovered an error in the classification with respect to the product described above. The product should have been classified in subheading 0210.19.0090, HTSUSA, the provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Other, Other", dutiable at 1.7 cents per kilogram.

Issue:

Whether the identified product is classified as "Bellies and cuts thereof" or as other than hams, shoulders, and bellies.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise

required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs.

This matter is governed by GRI 6, in that the choice in classification is between two subheadings at the 6-digit level. In this case, the named provision, "bellies" does not describe the product in that the product consists of back, not belly meat. Therefore, the products are "other" than bellies and are classified in subheading 0210.19.0090, HTSUSA.

Holding:

NY A80393, issued March 7, 1996, is modified to reclassify frozen, rindless, cured, smoked or unsmoked back pork bacon slabs in subheading 0210.19.0090, HTSUSA, the provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Other, Other", dutiable at 1.7 cents per kilogram.

JOHN A. DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 960586 JGB
Category: Classification
Tariff No. 0210.19.0090

MR. GURMEJ SINGH
JB FOODS
159 Bayne Crescent
Cambridge, Ontario N1T 1K4
Canada

Re: Modification of NY 818468; tariff classification of bacon from Denmark.

DEAR MR. SINGH:

This is in reference to New York Ruling Letter (NY) 818468, issued to you on January 30, 1996, concerning the classification of bacon products from Denmark.

Facts:

In NY A80393, issued January 30, 1996, Customs ruled that rindless, smoked back pork bacon would be properly classified under subheading 0210.12.0020, Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA), a provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Bellies (streaky) and cuts thereof, Other" now dutiable at 1.7 cents per kilogram as products of Denmark.

Upon review of this ruling, Customs has discovered an error in the classification with respect to the product described above. The product should have been classified in subheading 0210.19.0090, HTSUSA, the provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Other, Other", dutiable at 1.7 cents per kilogram.

Issue:

Whether the identified product is classified as "Bellies and cuts thereof" or as other than hams, shoulders, and bellies.

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in

the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs.

This matter is governed by GRI 6, in that the choice in classification is between two subheadings at the 6-digit level. In this case, the named provision, "bellies" does not describe the product in that only a small portion of belly strip is left attached to the back. Therefore, the product is "other" than bellies and is classified in subheading 0210.19.0090, HTSUSA.

Holding:

NY 818468, issued January 30, 1996, is modified to reclassify rindless, smoked back pork bacon in subheading 0210.19.0090, HTSUSA, the provision for "Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal: Meat of swine: Other, Other", dutiable at 1.7 cents per kilogram.

JOHN A. DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF THE CHEMICAL COMPOUND "1-(3-DIMETHYLAMINOPROPYL)-3-ETHYLCARBODIIMIDE HYDROCHLORIDE"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings pertaining to the tariff classification of the chemical compound 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride (CAS # 25952–53–8) under the Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA). Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before July 10, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch, (202) 927–2346.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings pertaining to the tariff classification of 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride also known as N'-(ethylcarbonimidoyl)-N,N-dimethyl-1,3-propanediamine monohydrochloride (CAS # 25952–53–8).

In New York Ruling Letter (NY) 889550, issued on September 15, 1993, Customs ruled that 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride was classified in subheading 2925.19.5000, HTSUSA, the residual provision for nonaromatic imides and their derivatives. In NY 807959, issued on April 3, 1995 Customs ruled that 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride was classified in subheading 2925.19.9000, HTSUSA, the analogous provision in the 1995 tariff schedule. NY 889550 and NY 807959 are set forth in "Attachment A" and "Attachment B" to this document.

Upon review of these rulings, Customs has discovered an error in the classification of 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride. This product should have been classified in the residual provision for other nonaromatic imines. This provision was found in subheading 2925.20.5000, HTSUSA, in the 1993 tariff schedule and 2925.20.9000, HTSUSA, in the 1995 tariff schedule. It continues to be subheading 2925.20.9000, HTSUSA, in the 1998 tariff schedule.

An imine is a compound "containing the group * * * =NH, in which the nitrogen atom is linked to a carbon atom by a double bond" while an imide is an organic compound "containing the group—CO.NH.CO.—." Daintith, *A Dictionary of Chemistry*, third ed., Oxford University Press. 1-(3-Dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride contains carbon nitrogen double bonds characteristic of an imine, while it lacks the carbon oxygen double bond typical of an imide. Therefore, it is properly classified in the subheading "imines and their derivatives; salts thereof."

Customs intends to revoke NY 889550 and NY 807959 to reflect the proper classification of 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters Ruling Letter (HQ) 958631, revoking NY 889550 and NY 807959, is set forth as "Attachment C" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: May 22, 1998.

JOHN T. ROTH,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, September 15, 1993.

CLA-2-29:S:N:N7:240 889550
Category: Classification
Tariff No. 2925.19.5000

MR. EDMUND J. CORBOY
AUSTIN CHEMICAL COMPANY, INC.
9655 West Bryn Mawr Avenue
Rosemont, IL 69918-5299

Re: The tariff classification of 1-(3-Dimethylaminopropil)-3-ethylcarbodiimide HCL (CAS # 25952-53-8) from Japan.

DEAR MR. CORBOY:

In your letter dated August 18, 1993, you requested a tariff classification ruling.

The applicable HTS subheading for 1-(3-Dimethylaminopropil)-3-ethylcarbodiimide HCL (CAB # 25952-53-8) also known as N'-(ethylcarbonimidoyl) N'(ethylcarbonimidoyl)-N,N-dimethyl-1,3-propanediamine monhydrochloride will be 2925.19.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for carboyimide-function compounds (including saccharin and its salts) and imine-function compound: imides and their derivatives; salts thereof: other: other. The duty rate will be 3.7 percent.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, April 3, 1995.

CLA–2–29:S:N:N7:240 807959
Category: Classification
Tariff No. 2925.19.9000

MR. EDMUND J. CORBOY
AUSTIN CHEMICAL COMPANY
1565 Barclay Boulevard
Buffalo Grove, IL 60089–4537

Re: The tariff classification of 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide HCL (CAS # 25952–53–8) from Japan.

DEAR MR. CORBOY:

In your letter dated March 9, 1995 you requested a tariff classification ruling.

The applicable subheading for 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide HCL (CAS # 25952–53–8) also known as N'-(ethylcarbonimidoyl)-N,-N-dimethyl-1,3-propanediamine monohydrochloride will be 2925.19.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for carboxyimide-function compounds (including saccharin and its salts) and imine-function compounds: imides and their derivatives; salts thereof: other: other: other. The rate of duty will be 3.7 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 958631 MGM
Category: Classification
Tariff No. 2925.20.9000

MR. EDMUND J. CORBOY
AUSTIN CHEMICAL COMPANY, INC.
1565 Barclay Boulevard
Buffalo Grove, IL 60089–4537

Re: 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride (CAS # 25952–53–8); Revocation of NY 889550 and NY 807959.

DEAR MR. CORBOY:

This office has determined that New York Ruling Letter (NY) 889550, issued to you on September 15, 1993, and NY 807959, issued to you on April 3, 1995, concerning the tariff classification of 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride (CAS # 25952–53–8), are in error. Therefore, this ruling revokes NY 889550 and NY 807959.

Facts:

In NY 889550, the Area Director, New York Seaport, ruled that 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride was classified in subheading 2925.19.5000,

HTSUSA, the residual provision for nonaromatic imides and their derivatives. In NY 807959, Customs ruled that 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride was classified in subheading 2925.19.9000, HTSUSA, the analogous provision in the 1995 tariff schedule.

Upon review of this ruling, Customs has discovered an error in the classification of 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride. This product should have been classified in the residual provision for nonaromatic imines. This provision is found in subheading 2925.20.5000, HTSUSA, in the 1993 tariff schedule and 2925.20.9000, HTSUSA, in the 1995 tariff schedule. It continues to be subheading 2925.20.9000, HTSUSA, in the 1998 tariff schedule.

Issue:

Whether 1-(3-dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride is classified under the provision for imides and their derivatives, or the provision for imines and their their derivatives.

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

This matter is governed by GRI 6, in that the choice in classification is between two subheadings at the 6-digit level. One provides for "imines and their derivatives; salts thereof," while the other provides for "imides and their derivatives; salts thereof," An imine is a compound "containing the group * * * =NH, in which the nitrogen atom is linked to a carbon atom by a double bond" while an imide is an organic compound "containing the group—CO.NH.CO.—." Daintith, *A Dictionary of Chemistry*, third ed., Oxford University Press. Inasmuch as 1-(3-Dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride contains carbon nitrogen double bonds characteristic of an imine but lacks the carbon oxygen double bond typical of an imide, it is properly classified in the subheading "imines and their derivatives; salts thereof."

Holding:

1-(3-Dimethylaminopropyl)-3-ethylcarbodiimide hydrochloride is classified in subheading 2925.20.5000, HTSUSA (1993) and subheading 2925.20.9000, HTSUSA (1995) with a general column one duty rate of 3.7% ad valorem. The proper classification under the current tariff is subheading 2925.20.9000, HTSUSA, with a 1998 general column one duty rate of 3.7% ad valorem.

NY 889550 and NY 807959 are revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Richard W. Goldberg
Donald C. Pogue
Evan J. Wallach

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Dominick L. DiCarlo

Nicholas Tsoucalas

R. Kenton Musgrave

Clerk

Raymond F. Burghardt

PUBLIC VERSION

(Slip Op. 98–46)

E.I. DUPONT DE NEMOURS & CO., PLAINTIFF *v.* UNITED STATES OF AMERICA, DEFENDANT, AND AIR PRODUCTS AND CHEMICALS, INC., DEFENDANT-INTERVENOR

Court No. 97–01–00055

[Commerce's determination regarding the scope of the Order is remanded.]

(Decided April 15, 1998)

Crowell & Moring LLP (Barry E. Cohen, Matthew Tuchband) for Plaintiff.

Frank W. Hunger, Assistant Attorney General of the United States, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; *Velta A. Melnbrencis*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; Of Counsel, *Linda A. Andros*, Attorney-Advisor, Office of Chief Counsel for Import Administration, United States Department of Commerce, for Defendant.

Ellis & Aeschliman (David R. Busam) and *Wickens & Lebow (Edward M. Lebow)* for Defendant-Intervenor.

OPINION

POGUE, *Judge:* This case is before the Court on Plaintiff's, E.I. DuPont de Nemours & Company ("DuPont"), motion for judgment upon the agency record pursuant to USCIT R. 56.2. The Plaintiff challenges the Department of Commerce ("Commerce") determination that polyvinyl alcohol ("PVA") produced in Taiwan from DuPont's own U.S.-origin materials is foreign merchandise within the scope of the antidumping duty order, entitled *Polyvinyl Alcohol From Japan, the People's Republic of China, and Taiwan*, 61 Fed. Reg. 24,286 (Dep't Commerce 1996 (antidumping duty ord.)("Order"). This Court has jurisdiction over this matter under 19 U.S.C. § 1516a(a)(2)(B)(vi)(1994) and 28 U.S.C. § 1581(c)(1994).

BACKGROUND

In March 1995, Air Products and Chemicals, Inc. ("Air Products"), a domestic producer of PVA, filed a petition requesting that Commerce in-

itiate an antidumping investigation of certain PVA from Taiwan.[1] In April 1995, Commerce initiated the requested investigation to determine whether imports of PVA from Taiwan, were being, or were likely to be sold in the United States at less than fair value. *Polyvinyl Alcohol From Japan, the Republic of Korea, the People's Republic of China, and Taiwan*, 60 Fed. Reg. 17,053 (Dep't Commerce 1995)(init. antidumping duty investigation). The period of investigation ("POI") was April 4, 1994, through March 31, 1995. *Polyvinyl Alcohol From Taiwan*, 61 Fed. Reg. 14,064, 14,065 (Dep't Commerce 1996)(final det.).

As a result of its investigation, Commerce determined that the subject merchandise was being sold in the United States at less than fair value. Chang Chun Petrochemical Co., Ltd. ("Chang Chun"), the sole Taiwan producer of the subject merchandise was assigned an *ad valorem* weighted-average dumping margin of 19.21%. *Id.* at 14,073.

On May 14, 1996, Commerce published the Order covering PVA imported from Taiwan. The scope of the Order was defined as follows:

> The merchandise covered by these orders is polyvinyl alcohol. Polyvinyl alcohol is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this investigation are polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and polyvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. Polyvinyl alcohol in fiber form is not included in the scope of these orders.

61 Fed. Reg. at 24,287.

On October 1, 1996, DuPont requested a scope ruling from Commerce pursuant to 19 C.F.R. § 353.29. *See* C.R. Doc. No. 1 (Application for Scope Determination: Polyvinvyl Alcohol From Taiwan, No. A–583–824, Oct. 1, 1996) ("Application"). Through this process, Commerce determines whether certain products fall within the scope of an order.[2] *See* 19 C.F.R. § 353.29; *Ericsson GE Mobile Communications, Inc. v. United States*, 60 F.3d 778, 783 (Fed. Cir. 1995).

Plaintiff's Application sought a ruling from Commerce excluding "PVA produced by" Chang Chun from DuPont's U.S.-origin vinyl acetate monomer ("VAM") pursuant to a contractual relationship with DuPont, from coverage under the Order. Application at 2–3. DuPont described its relationship with Chang Chun as "a tolling relationship, in

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[1] The petition and investigation also covered imports of PVA from the Republic of Korea, the People's Republic of China and Japan.

[2] A scope determination can be initiated by Commerce, 19 C.F.R. § 353.29(a), or by the application of an interested party, 19 C.F.R. § 353.29(b). The application contains detailed information which Commerce considers in determining whether a formal scope inquiry is warranted. *Id.* If an inquiry is not warranted, Commerce "issues a final ruling as to whether the merchandise which is the subject of the application is included in the existing order." *Id.* If a scope inquiry is warranted, Commerce requests comments from all interested parties, and subsequently issues its determination. *Id.*

which one party (the toll producer or toller) performs a manufacturing process on the goods of another party (the owner)." *Id.* at 3

According to the Application, DuPont produces VAM in the United States and ships it to Chang Chun. Chang Chun performs a chemical process in which the VAM is polymerized into polyvinyl acetate. *Id.* at 2. The polyvinyl acetate is then converted to PVA in a second chemical process. A solvent aids the process, and certain other chemicals are used as processing aids. *Id.* "On completion of the conversion process, [most] of the PVA produced by Chang Chun is shipped by DuPont back to the United States. Sales of PVA are made by DuPont to customers in the United States and elsewhere." *Id.* at 3

While DuPont recognizes that its PVA was imported from Taiwan, the company claims that "PVA toll-produced in Taiwan from DuPont's U.S.-origin raw materials and re-exported to the United States" is not within the scope of the Order because the imported PVA "is a [U.S.] product for antidumping purposes."[3] *Id.* at 2, 5.

DuPont concedes that its PVA is Taiwanese for Customs' country-of-origin purposes; nonetheless, DuPont argues, it controls the entire production process; it manufactures PVA from U.S.-origin materials, and it controls the selling price of the final product. Pl.'s Brief at 22–23. Therefore, DuPont claims, Chang Chun is merely a "final processor" and Chang Chun's processing does not give the merchandise its national character. *Id.* at 22.

After determining that no formal scope inquiry was warranted, 19 C.F.R § 353.29(b), Commerce decided that "the product imported by DuPont falls within the antidumping order on PVA from Taiwan, unless [Commerce] conclude[s] that the U.S.-origin input provided by DuPont, VAM[,] is not substantially transformed in Taiwan *(i.e.*, the processing of VAM into PVA does not constitute substantial transformation)." P. R. Doc. No. 5 at 3 (Final Scope Ruling on Antidumping Duty Order on Polyvinyl Alcohol from Taiwan, Dec. 19, 1996)("Scope Determination").

Substantial transformation generally refers to a degree of processing or manufacturing resulting in a new and different article. *See e.g.*, *Cold-Rolled Carbon Steel Flat Products From Argentina*, 58 Fed. Reg. 37,062, 37,066 (Dep't Commerce 1993)(final det.)(finding that galvanizing is a bonding process which changes the character and use of the sheet, therefore, a cold-rolled sheet that is galvanized in a subject country is substantially transformed into a product of that country); *Limousines From Canada*, 55 Fed. Reg. 11,036, 11,040 (Dep't Commerce 1990)(final det.)("The Department considers limousine conversion to be a sophisticated process which transforms the base vehicle into a new and different article of merchandise."). Using this standard, Commerce "examined whether the degree of processing or manufacturing" necessary to convert VAM into PVA "resulted in a new and different article," and determined that the processing by Chang Chun constituted substantial

[3] The parties agree that the merchandise subject to the Order is PVA and that the merchandise imported by DuPont is PVA. Pl.'s Mem. Supp. Mot. J. Agency R. at 3 ("Pl.'s Brief").

transformation. Scope Determination at 3. Commerce, therefore, concluded that "the imported PVA must be considered Taiwanese PVA that is subject to the order." *Id.*

STANDARD OF REVIEW

The Court of International Trade reviews Commerce's scope determination to decide whether it is in accordance with law and supported by substantial evidence. *See* Section 516a(b)(1)(B)(i) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(b)(1)(B)(i)(1994).

In determining whether Commerce's interpretation and application of the antidumping statute is in accordance with law, this court applies the two-step analysis articulated in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984), as applied and refined by the Federal Circuit. The first task is "to determine whether Congress has 'directly spoken to the precise question at issue.'" *Id.* If the statute unambiguously deals with the subject matter in issue, the court, as well as the agency, must give effect to the intent of Congress. *Id.; see, e.g., Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F.3d 398, 402–403 (Fed. Cir. 1994), *cert denied*, 513 U.S. 813 (1994); *Zenith Elec. Corp. v. United States*, 988 F.2d 1573, 1582 (Fed. Cir. 1993).

"If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843. Considerable weight is accorded Commerce's construction of the antidumping laws, whether that construction manifests itself in the application of the statute, *see, e.g., Daewoo Elec. Co. v. Int'l Union of Elec., Technical, Salaried and Mach. Workers*, 6 F.3d 1511, 1516 (Fed. Cir. 1993), *cert denied*, 512 U.S. 1204 (1994); *Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1039 (Fed. Cir. 1996), or in the promulgation of a regulation, *see, e.g., Smith-Corona Group v. United States*, 713 F.2d 1568, 1575 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984).

When examining Commerce's factual determinations to decide whether they are supported by substantial evidence, the court must determine whether the record contains "such relevant evidence as a reasonable mind might accept as adequate to support [Commerce's] conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951)(quoted in *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 933 (Fed. Cir. 1984)). Substantial evidence "is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 619–20 (1966).

DISCUSSION

Antidumping orders are issued for "a class or kind of foreign merchandise." *See* 19 U.S.C § 1673(1)(1994). The statute does not define

"foreign"; nor does it contain a standard for Commerce to apply in determining whether the merchandise at issue is a domestic product or a product of a foreign nation. When a statute is silent or ambiguous, the Court must defer to Commerce's reasonable interpretation. *Koyo Seiko Co. v. United States*, 36 F.3d 1565, 1573 (Fed. Cir. 1994). In this case Commerce's decision to use the "substantial transformation" test to determine the nationality of the subject merchandise is a permissible application of the statute.

The "substantial transformation" rule provides a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require that the resulting merchandise be considered the product of the country in which the transformation occurred. *See Smith Corona Corp. v. United States*, 17 CIT 47, 50, 811 F. Supp. 692, 695 (1993)(noting that in determining if merchandise exported from an intermediate country is covered by an antidumping order, Commerce identified the country of origin by considering whether the essential component is substantially transformed in the country of exportation); *Ferrostaal Metals Corp. v. United States*, 11 CIT 470, 473, 664. F. Supp. 535, 537 (1987)(stating that in determining if a product originated in the country of exportation, Commerce considered whether operations performed on products in the country of exportation are of such a substantial nature to justify the conclusion that the resulting product is a manufacture of that country). Further, the standard provides a means by which this court can understand the basis of the agency's action and so may review Commerce's exercise of its statutory responsibilities. *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 807 (1973).

In its scope determination here, Commerce relied on its "substantial transformation" rule to determine whether DuPont's PVA was a product of Taiwan. Scope Determination at 3. Commerce's interpretation—that merchandise produced overseas from U.S.-origin materials will be U.S. merchandise only if the foreign production process does not constitute "substantial transformation"—is a reasonable application of 19 U.S.C. § 1673(1) because it comports with the plain meaning of the statute.

DuPont argues Commerce's determination is inconsistent with the general scheme and purpose of the antidumping statute. Pl.'s Brief at 22. Under the statutory scheme, Commerce compares United States price to the normal value of the subject merchandise to determine whether there is dumping. *See* 19 U.S.C. § 1677b. DuPont maintains that the clear intent of the statute is to exclude the merchandise at issue because there is no foreign "normal" value to compare to the United States price. DuPont claims that the U.S. market is DuPont's home market. DuPont argues there is no sale of PVA outside the United States before importation, and therefore, the Department's antidumping investigation will compare DuPont's prices in the same market to each other, demonstrating that in the absence of a foreign "normal" value an antidumping in-

vestigation cannot reasonably proceed. Pl.'s Brief at 20. The Court does not agree.

Plaintiff's argument is flawed because in calculating normal value pursuant to section 1677b, the "home market" is the "exporting country."[4] 19 U.S.C. § 1677b(a)(1)(B). The tolled PVA is exported from Taiwan to the United States. Therefore, for purposes of calculating normal value under the statute, the home market is Taiwan, not the United States. Def.'s Mem. Opp'n to Pl.'s Mot. J. Agency R. at 37.

The antidumping statute reflects Congress' recognition that country of origin determinations are vital to preserve the integrity of existing antidumping orders from potential circumvention through third country assembly, U.S. assembly, and transhipment of subject merchandise through intermediate countries. *See* 19 U.S.C. §§ 1677j, 1677b(a)(3). Because antidumping orders apply to merchandise from particular countries, not individual producers, determining the country where the unfairly traded merchandise is produced or manufactured is fundamental to the proper administration and enforcement of the antidumping statute. *See* 19 U.S.C. § 1673; *see also* §§ 1677j, 1677b(a)(3). The "substantial transformation" rule provides a means for Commerce to carry out its country of origin examination and properly guards against circumvention of existing antidumping orders.

DuPont also argues that Commerce's substantial transformation rule is inconsistent with the Department's own regulations on "tolling":

> [Commerce] will not consider a toller or sub-contractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise or foreign like product.

62 Fed. Reg. 27,296, 27,411 (May 19, 1997)(final rule), codified at 19 C.F.R. § 351.401(h)(1997). This regulation, however, addresses the relationship of the parties in the manufacturing process, not the nationality of the merchandise itself. The substantial transformation test determines whether the "toller"/processor performs functions of such significance as to change the national character of the merchandise. This test is not one that bears on the relationship of the parties in the manufacturing process. Upon its face, the regulation does not preclude a U.S. producer from becoming a respondent in an antidumping proceeding when merchandise it owns is produced or further processed in a foreign country. DuPont's interpretation of the regulation is too broad as it would allow an owner of merchandise, e.g., raw materials, to circumvent the antidumping statute simply by categorizing its foreign processor as a "toller."

DuPont also argues that Commerce's determination is inconsistent with *Brass Sheet and Strip From Canada*, 58 Fed. Reg. 33,610 (Dep't Commerce 1993)(final det.). Pl.'s Brief at 34. The Court does not agree.

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[4] The factual assumptions upon which Plaintiff relies are also incorrect. This is demonstrated by Commerce's preliminary results. *Polyvinyl Alcohol From Taiwan*, 63 Fed. Reg. 6,526, 6,528 (Dep't Commerce 1998)(prel. results admin. rev.). In the absence of contemporaneous home-market or third-country sales Commerce relied on constructed value to determine normal value. *Id.* at 6,530.

In *Brass Sheet*, the merchandise toll-produced in Canada was included in the scope of the antidumping duty order. For the toll-produced merchandise, Commerce treated metal value as a separate item. Commerce calculated a margin that did not include the value of the U.S.-origin metal from which the brass sheet and strip was produced. *Id.* at 33,611–612. Here, DuPont withdrew its request that Commerce calculate a rate that did not include the value of the U.S.-origin materials. *See* 61 Fed. Reg. at 14,070. Thus, this case is distinguishable from *Brass Sheet*.

Accordingly, the Court upholds Commerce's use of the "substantial transformation" rule to define "foreign" merchandise as in accordance with law.

Commerce's determination, however, also must be supported by substantial evidence in the record. Applying the "substantial transformation" standard, Commerce "examined whether the degree of processing or manufacturing resulted in a new and different article" and concluded that "VAM must undergo a substantial transformation" in Taiwan to be converted into PVA. Scope Determination at 3. However, it is not clear to the Court what evidence formed the basis of Commerce's determination. "[T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained." *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943). Therefore, the Court is remanding this issue for reconsideration. Commerce appears to have relied upon a confidential document describing Chang Chun's production process. *See* P.R. Doc. No. 8 (Chang Chun's Consent to Placement of Certain Proprietary Information from Antidumping Investigation on Record of Instant Proceeding, March 19, 1997). Upon remand, Commerce at minimum[5] should explain to the Court the evidence it is relying on to make its substantial transformation determination.[6]

CONCLUSION

In accordance with the foregoing, it is hereby ORDERED that Commerce's determination regarding the scope of the Order is remanded. Commerce shall complete its remand determination by **Monday, June 15, 1998**. Any comments or responses are due by **Monday, July 13, 1998**. Any rebuttal comments are due by **Tuesday, July 28, 1998.**

It is further ORDERED that Plaintiff's motions are denied in all other respects.

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[5] Commerce has the discretion to re-open the record, *Industrial Quimica del Nalon, S.A. v. United States*, 16 CIT 84, 85 (1992), in order to satisfy the Court's remand order. Commerce may also choose to conduct a formal scope inquiry pursuant to 19 C.F.R. § 353.29.

[6] On December 8, 1997, Plaintiff filed a motion to strike certain portions of Defendant's reply brief and Defendant-Intervenor's response brief. Plaintiff argues Defendant and Defendant-Intervenor relied on factual material outside of the administrative record. Pl.'s Mot. Strike Portions Def.'s Reply Brief & Def.-Intervenor's Response Brief at 2. Specifically, Plaintiff claims Defendant and Defendant-Intervenor relied on evidence outside of the record concerning the PVA production process. *Id.* Because the Court is remanding for Commerce to explain the evidence that it is relying on to make its substantial transformation determination, Plaintiff's motion is denied as moot.

(Slip Op. 98–63)

MIDWEST OF CANNON FALLS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 92–03–00206

(Dated May 12, 1998)

JUDGMENT ORDER

GOLDBERG, *Judge:* In accordance with the decision (Aug. 14, 1997) and mandate (Oct. 6, 1997) of the United States Court of Appeals for the Federal Circuit, Appeal Nos. 96–1271 and 96–1279, affirming-in-part and reversing-in-part this Court's decision in *Midwest of Cannon Falls, Inc. v. United States*, 20 CIT ___, Slip Op. 96–19 (Jan. 19, 1996) *("Midwest")*, it is hereby

ORDERED that the portion of this Court's Opinion and Order in *Midwest*, holding that Customs properly classified jack-o-lantern earthenware mugs and jack-o-lantern earthernware pitchers under HTSUS subheadings 6912.00.44 and 6912.00.48, respectively, is vacated; and it is further

ORDERED that Customs shall reliquidate the aforementioned subject merchandise under HTSUS subheading 9505.90.60 as "Other festive articles," in accordance with the Federal Circuit's decision and mandate. Customs shall refund all excess duties paid with interest as provided by law.

(Slip Op. 98–64)

BÖHLER-UDDEHOLM CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND ALLEGHENY LUDLUM STEEL CORP., WASHINGTON STEEL CORP., AND G.O. CARLSON, INC., DEFENDANT-INTERVENORS

Consolidated Court No. 95–08–01024

[Remand determination sustained and plaintiff's motion for judgment on the agency record denied]

(Dated May 14, 1998)

O'Donnell, Byrne & Williams, (R. Kevin Williams and *Michael A. Johnson)* for plaintiff.

Frank W. Hunger, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Randi-Sue Rimerman), Carlos A. Garcia*, Attorney-Advisor, Office of the Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for defendant.

Collier, Shannon, Rill & Scott, PLLC, (Paul C. Rosenthal, John B. Brew and *Jeffrey S. Beckington)* for defendant-intervenors.

OPINION

RESTANI, *Judge:* Before the court is the United States Department of Commerce's ("Commerce") *Results of Redetermination Pursuant to Court Remand, Böhler-Uddeholm Corp. v. United States, Slip Op. 97–178 (Dec. 22, 1997)* [hereinafter *"Third Remand Results"].* Familiarity with the court's earlier decisions in this case is presumed.[1]

In *Böhler-Uddeholm III*, the court reviewed Commerce's *Second Remand Results* and again remanded to Commerce with the following instructions: (1) consider the relevant evidence based on a review of the entire record before Treasury in 1976, including the three documents excluded from review in the *Second Remand Results*; (2) comply with the remand instructions articulated in *Böhler-Uddeholm II*; and (3) address the arguments raised in Böhler-Uddeholm's Objections to the Agency's Second Remand Redetermination. In the *Third Remand Results*, which included in part the analysis from the *Second Remand Results*, Commerce concluded that Stavax and Ramax are within the scope of the original antidumping finding on stainless steel plate from Sweden.

Böhler-Uddeholm raises three arguments contesting this conclusion: (1) Commerce relied on a document, the American Iron and Steel Institute, *Steel Products Manual: Stainless and Heat Resisting Steels* (1974) ("AISI Manual"), that was not in the record before Treasury; (2) the definition of the scope gleaned by Commerce from the Tariff Commission Staff Report ("Staff Report") is overly broad and therefore Commerce improperly determined that AISI grade 414 and grade 420 steels, the grades Stavax and Ramax compete with, are within the scope of the finding; and (3) the *Carborundum*[2] analysis employed by Commerce incorrectly focused on resistance to corrosion and abrasion, a physical characteristic, and ignores or incorrectly analyzes the use information on the record. The court sustains Commerce's *Third Remand Results* in its entirety.

I

Böhler-Uddeholm argues that Commerce's Second Remand Results contained references to the AISI Manual, a portion of which was attached to the petition, but which plaintiff argues was not before Treasury in its entirety. Thus, Böhler-Uddeholm argues that the *Third Remand Results*, which relied in part on the *Second Remand Results*, are invalid to the extent it relies on the AISI Manual.

Böhler-Uddeholm is barred from raising this issue before the court because it did not raise it during the administrative process. *See Budd Co. v. United States*, 773 F. Supp. 1549, 1554–55 (Ct. Int'l Trade 1991) (finding plaintiff's claim barred by failure to exhaust administrative re-

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[1] *See Böhler-Uddeholm Corp. v. United States*, 946 F. Supp. 1003 (Ct. Int'l Trade 1996) [hereinafter *"Böhler-Uddeholm I"], remanded, Böhler-Uddeholm Corp. v. United States*, 978 F. Supp. 1176 (Ct. Int'l Trade 1997) [hereinafter *"Böhler-Uddeholm II"], sustained in part, remanded in part, Böhler-Uddeholm Corp. v. United States*, No. 95–08–01024, Slip Op. 97–178, 1997 WL 792936 (Ct. Int'l Trade 1997) [hereinafter *"Böhler-Uddeholm III"], remanded.*

[2] *See United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1976).

medies where plaintiff failed to raise argument during remand proceeding). Böhler-Uddeholm did not raise this issue in its objections to the *Second Remand Results*, nor did it raise it in its comments to the *Third Remand Results*. Moreover, while at one point in its comments to the draft remand determination Böhler-Uddeholm stated that it had doubts as to whether the AISI Manual was before Treasury, in a separate section of the same document, Böhler-Uddeholm relied on the AISI Manual to support its own position that Stavax and Ramax, like grades 414 and 420, are martensitic steels and thus not within the scope of the antidumping finding. *See Böhler-Uddeholm Comments on Preliminary Redetermination*, Def.'s App. at 78, 81.

II

In *Böhler-Uddeholm III*, the court instructed Commerce to review three documents that were excluded from its analysis in the *Second Remand Results*. In its analysis of one of those documents, the Tariff Commission Staff Report, Commerce stated:

> There is no evidence in the Staff Report indicating that the Tariff Commission intended to limit the scope of the finding to the "major uses" enumerated in the petition, or that any merchandise meeting the chemical and physical dimensions of stainless steel plate was to have been excluded from the finding.

Third Remand Results, Def.'s App. at 38. Commerce further stated:

> The Staff Report sets forth five categories of stainless steel plate: (1) Grade 304, (2) Grade 304(L), (3) Grade 316, (4) Grade 316(L), and (5) "All Other" Grades. The uses or applications of these "other" grades, are not mentioned in the Staff Report. A reasonable inference, however, would be that the category "other grades" encompasses additional grades of steel meeting the chemical and physical dimension of stainless steel plate beyond the specified 300-grades.

Id.

Böhler-Uddeholm challenges two aspects of Commerce's analysis of the Staff Report. First, Böhler-Uddeholm argues that Commerce incorrectly determined the scope of the original finding because the Staff Report provides a narrow definition of the subject class or kind of merchandise, limited to the uses listed in the petition. Commerce's conclusion that the Staff Report did not limit the scope to certain specific uses of stainless steel plate, however, is supported by substantial evidence. Like the petition, the Staff Report listed the major uses of the subject class or kind of merchandise. *Staff Report*, at 4, Pl.'s App., Ex. 3, at 42. Similarly, the court has repeatedly held that the list of uses in the petition is not exhaustive. *See Böhler-Uddeholm II*, 978 F. Supp. at 1180 & n.7; *Böhler-Uddeholm I*, 946 F. Supp. at 1008. Further, Böhler-Uddeholm fails to point to any evidence that grades of stainless steel plate used in certain applications were excluded or that steel used as "tool steel" is different from the class or kind of merchandise. Thus, while Böhler-Uddeholm cites evidence that when viewed in isolation supports

an alternative conclusion, the court will not reweigh the evidence nor disturb a determination supported by substantial evidence.

Böhler-Uddeholm also argues that contrary to Commerce's conclusion, the Staff Report limited the scope of the class or kind of merchandise under investigation to four 300-grades of steel and excluded grades 414 and 420, which compete with Stavax and Ramax. The court finds that Commerce's determination is supported by substantial evidence. Commerce based its determination on the definition of the subject class in terms of physical characteristics, the consideration of imports and domestic production of "all other grades," and the fact that no grade of stainless steel otherwise falling within the definition of the subject class was explicitly excepted from the scope of the finding.

III

Böhler-Uddeholm also argues that Commerce incorrectly performed the *Carborundum* analysis by: (1) comparing Stavax and Ramax to AISI stainless steel grades 414 and 420, rather than to the "totality of the class and kind in question;" (2) improperly focusing on the ability of stainless steel plate to resist corrosion and abrasion; and (3) placing excessive weight on the physical characteristics factor and insufficient weight on the use factor.

Contrary to Böhler-Uddeholm's assertions, Commerce did not err in its *Carborundum* analysis. First, throughout the *Third Remand Results*, Commerce compared Stavax and Ramax to the entire class or kind of merchandise subject to the antidumping finding. Commerce's infrequent references to grades 414 and 420 do not demonstrate that Commerce defined the scope of the class or kind of merchandise by limiting the comparison of Stavax and Ramax to only those two grades. Within its discussion, Commerce mentions steel grades 414 and 420 once to refute Böhler-Uddeholm's assertion that Commerce considered those two grades as defining the class or kind of merchandise. *Third Remand Results*, Def.'s App., at 46 n.3; *see also id.* at 50. In that situation, Commerce explained its analysis by noting that just as all other grades of steel within the scope were resistant to corrosion and abrasion, such as the 400 grades of steel, so were Stavax and Ramax. Commerce's only other mention of 400 grade steel is in its analysis to comments received. *Id.* at 53–54. In that situation, Commerce mentioned a 400 grade steel as an example to support its position that focusing on the sub-applications of stainless steel plate to determine the use of the class or kind of merchandise leads to impractical results; not to establish a comparison solely between grade 420 and Stavax and Ramax.

Second, the court is unpersuaded by Böhler-Uddeholm's argument that Commerce relied on resistance to corrosion and abrasion throughout its *Carborundum* analysis instead of limiting it to the physical characteristics factor. Commerce logically concluded that physical dimension and chemical composition, not resistance to corrosion and abrasion, determined whether Stavax and Ramax have similar physical characteristics to the entire class or kind of merchandise. Moreover,

Commerce did not refer to resistance to corrosion and abrasion in its analysis of at least two *Carborundum* factors, the channels of trade and environment of sale. When Commerce did refer to resistance to corrosion and abrasion, it accurately categorized it as a criteria of use. The fact that all merchandise within the scope of the finding have this characteristic and that this characteristic indirectly influences other *Carborundum* factors does not invalidate Commerce's analysis.

Third, the court disagrees with Böhler-Uddeholm's argument that Commerce erred in its *Carborundum* analysis by placing excessive weight on the physical characteristics factor, thereby ignoring the use factor. Here, the weight given to any particular factor did not effect the outcome because Commerce found that all seven *Carborundum* factors favored inclusion of Stavax and Ramax within the scope of the finding. Moreover, Böhler-Uddeholm's argument seeks to increase the weight given to the use factor when "use" is narrowly defined and limited to the list in the petition; a proposition repeatedly rejected by the court in this case.

As Commerce followed the court's remand instructions and reached a determination supported by substantial evidence, the *Third Remand Results* are sustained and plaintiff's motion for judgment on the agency record is denied.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C98/54 5/13/98 DiCarlo, J.	Better Home Plastics Corp.	95–7–00916, etc.	6303.92.000 12.8% or 12.6%	3924.90.10 3.36% or 3%	Better Home Plastics Corp. *v.* U.S., S.O. 96–35 (1996)	New York Shower curtain sets
C98/55 5/15/98 Wallach, J.	Hi-Tec Sports, U.S.A.	95–2–00138	6404.19.15 10.5%	6403.91.60 8.5% 6403.91.90 10% 6403.40.60 8.5%	Agreed statement of facts	Seattle Various styles of hiking or service boots
C98/56 5/15/98 Carman, J.	IMSA Int'l Co.	95–2–00192	7013.99.50 30%	3307.90.00 Free of duty, imports from Mexico	Agreed statement of facts	El Paso Potpourri contained in different sizes of glass vases

ABSTRACTED VALUATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	VALUATION	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
V98/10 5/14/98 Newman, S.J.	Sandvik, Inc.	83–8–01151	Transaction value	F.o.b. Sandviken prices set forth on commercial invoices filed with entries, plus packing without any addition for inland freight or any other charges incurred as a consequence of inland transportation of the merchandise from Sandviken to Gothenberg	Agreed statement of facts	New York Steel products

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